(20,725.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 92.

WILLIAM GORDON CRAWFORD, PETITIONER,

vs.

THE UNITED STATES.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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1 In the Court of Appeals of the District of Columbia.

No. 1687.

WILLIAM GORDON CRAWFORD, Appellant,
vs.
THE UNITED STATES OF AMERICA.

Supreme Court of the District of Columbia.

No. 23866, Criminal.

THE UNITED STATES
vs.
WILLIAM G. CRAWFORD.

No. 23865, Criminal.

THE UNITED STATES
vs.
AUGUST W. MACHEN ET AL.

No. 24688, Criminal.

THE UNITED STATES
vs.
AUGUST W. MACHEN ET AL.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled causes, to-wit:

Indictment No. 23866.

Filed in Open Court July 31, 1903. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia, Holding a Criminal Court of the April Term, in the Year of our Lord Nineteen Hundred and Three.

DISTRICT OF COLUMBIA, *sct:*

The Grand Jurors for the United States of America, inquiring for the District of Columbia, upon their oath present, that William Gordon Crawford, late of the city of Washington, in the
2 District of Columbia, on the third day of October, in the year of our Lord nineteen hundred and two, at Washington afore-

said, in the said District of Columbia, did make and present, and cause to be made and presented, to one Thomas W. McGregor, he the said Thomas W. McGregor then and there being a person in the civil service of the said United States, to wit, a clerk in the office of the General Superintendent of the Free Delivery System, in the Post Office Department of the said United States, at Washington aforesaid, in the said District of Columbia, for approval by him as such clerk, and for payment out of the moneys of the said United States theretofore appropriated for the service of the said Post-Office Department and the Free Delivery Service of the said United States, a certain claim upon and against the said Post-Office Department, that is to say, a claim for the amount of a certain bill or account, in the total sum of fifteen thousand and eight hundred dollars, of the Postal Device and Lock Company, for five thousand carriers' satchels class B, then lately before furnished by the said Company to the said Post-Office Department under a certain contract, to wit, a written contract, dated the twenty-fifth day of June, in the same year nineteen hundred and two, between the said Postal Device and Lock Company and the said United States, for furnishing to the said Post-Office Department, amongst other things, satchels of the kind aforesaid, at the price of three dollars and sixteen cents each, including a shoulder strap for each satchel; which said Postal Device and Lock Company then, to wit, on the day first aforesaid, was a corporation, organized under the laws of the state of New Jersey, of and for which he the said William Gordon Crawford then and there, to wit, at Washington aforesaid, in the said District of Columbia, was vice-president, manager, attorney and agent; and that the said claim then and there was false, fictitious and fraudulent, in this, that, as he the said William Gordon Crawford then and there well knew, no shoulder straps had been furnished with or for any one of the said satchels so furnished to the said Post-Office Department, and no deduction on account of the absence of such shoulder straps, (they being valuable and necessary parts of the said satchels,) was then made in the said bill or account; and, further, that he the said William Gordon Crawford, at the time of so making and presenting the said claim, and causing the same to be made and presented as aforesaid, there well knew the same to be false, fictitious and fraudulent as aforesaid, and intended by means of the same to defraud the said United States out of such moneys as should be paid, out of the appropriation aforesaid, to him on behalf of, or to, the said Postal Device and Lock Company, on account of such shoulder straps. And so the Grand Jurors aforesaid, upon their oath aforesaid, do say, that the said William Gordon Crawford, on the said third day of October, in the year of our Lord nineteen hundred and two, at Washington aforesaid, in the said District of Columbia, in manner and form aforesaid, unlawfully did make and present, and cause to be made and presented, to a person in the civil service of the said United States, for approval by that person, and for payment by the said United States, a claim upon and against a

3 Department of the Government of the United States, which said claim he the said William Gordon Crawford then and

there knew to be false, fictitious and fraudulent; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

2. And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that the said William Gordon Crawford, on the first day of December, in the same year of our Lord nineteen hundred and two, at Washington aforesaid, in the said District of Columbia, unlawfully did make and present, and cause to be made and presented, to one Thomas W. McGregor, who was then and there a person in the civil service of the said United States, to wit, a clerk in the office of the General Superintendent of the Free Delivery system of the Post-Office Department of the said United States at Washington aforesaid, for approval by him as such clerk, and for payment out of the moneys of the said United States theretofore appropriated for the service of the said Post-Office Department and the Free Delivery Service of the said United States, a certain other claim upon and against the said Post-Office Department, that is to say, a claim for the amount of a certain bill or account, in the total sum of five thousand, four hundred and eighty-one dollars and fifty-seven cents, of the Postal Device and Lock Company, for two thousand, five hundred and three carriers' satchels class A then lately before furnished by the said company to the said Post-Office Department under a certain contract, to wit, a written contract, dated the twenty-fifth day of June, in the same year nineteen hundred and two, between the said Postal Device and Lock Company and the said United States, for the furnishing by the said company to the said Post-Office Department, amongst other things, of satchels of the kind in this count of this indictment mentioned, at the price of two dollars and nineteen cents each, including a shoulder strap for each satchel; which said Postal Device and Lock Company then, to wit, on the day in this count of this indictment first mentioned, was a corporation, organized under the laws of the state of New Jersey, of and for which he the said William Gordon Crawford then and there, to wit, at Washington aforesaid, in the said District of Columbia, was vice-president, manager, attorney and agent; and that the last-mentioned claim then and there was false, fictitious and fraudulent, in this, that, as he the said William Gordon Crawford then and there well knew, no shoulder strap had been furnished with or for any one of the satchels in this count of this indictment mentioned, so as aforesaid furnished to the said Post-Office Department, and no deduction on account of the absence of such shoulder strap, (they being valuable and necessary parts of the said satchels,) was then made in the said bill or account; and, further, that he the said William Gordon Crawford, at the time of so making and presenting the last-mentioned claim, and causing the same to be made and presented, as aforesaid, at Washington aforesaid, in the said District of Columbia, well knew the same claim to be false, fictitious and fraudulent as aforesaid, and intended then and there by means of the same to defraud the

4 said United States out of such moneys as should be paid out of the said appropriation, to him on behalf of, or to, the said Postal Device and Lock Company, on account of the last-mentioned

shoulder straps. And so the Grand Jurors aforesaid, upon their oath aforesaid, do say, that the said William Gordon Crawford, at the time and place and in manner and form in this count aforesaid, unlawfully did make and present, and cause to be made and presented, to a person in the civil service of the said United States, for approval by that person, and for payment by the said United States, a claim upon a department of the Government of the said United States, which said claim he the said William Gordon Crawford then and there knew to be false, fictitious and fraudulent; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

3. And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that the said William Gordon Crawford, on the fifth day of January, in the year of our Lord nineteen hundred and three, at Washington aforesaid, in the said District of Columbia, did make and present, and cause to be made and presented, to one Thomas W. McGregor, who was then and there a person in the civil service of the said United States, to wit, a clerk in the office of the General Superintendent of the Free Delivery System of the Post-Office Department of the said United States at Washington aforesaid, for approval by him as such clerk, and for payment by the said Department out of the moneys of the said United States theretofore appropriated for the service of the same and for the Free Delivery service of the said United States, a certain other claim upon and against the said Post-Office Department, that is to say, a claim for the amount of a certain bill or account, in the total sum of three thousand, three hundred and thirty-seven dollars and two cents, of the Postal Device and Lock Company, for one thousand, five hundred and eighteen carriers' satchels class A and four collectors' satchels class C, then lately before furnished by the said company to the said Post-Office Department under a certain contract, to wit, a written contract dated the twenty-fifth day of June, in the year of our Lord nineteen hundred and two, between the said Postal Device and Lock Company and the said United States, for the furnishing by the said company to the said Post-Office Department, amongst other things, of satchels of the kinds in this count of this indictment mentioned, the said class A satchels at the price of two dollars and nineteen cents each and the said class C satchels at the price of three dollars and fifteen cents each, including in both cases a shoulder strap for each satchel; which said Postal Device and Lock Company then, to wit, on the day in this count of this indictment first mentioned, was a corporation, organized under the laws of the state of New Jersey, of and for which he the said William Gordon Crawford then and there, to wit, at Washington aforesaid, in the said District of Columbia, was vice-president, manager, attorney and agent; and that the last-mentioned claim then and there was false, fictitious and fraudulent, in this, that, as he the said William Gordon Crawford then and there well knew, no shoulder strap had been furnished with or for any one of the satchels in this count of this indictment mentioned, so as aforesaid furnished to the said Post-Office Department, and no deduction on account of the

absence of such shoulder straps, (they being valuable and necessary parts of the said satchels,) was then made in the said bill or account; and, further, that he the said William Gordon Crawford, at the time of so making and presenting the last-mentioned claim, and causing the same to be made and presented, as aforesaid, at Washington aforesaid, in the said District of Columbia, well knew the same claim to be false, fictitious and fraudulent as aforesaid, and intended then and there by means of the same to defraud the said United States out of such moneys as should be paid, out of the said appropriation, to him on behalf of, or to, the said Postal Device and Lock Company, on account of the last-mentioned shoulder straps. And so the Grand Jurors aforesaid, upon their oath aforesaid, do say, that the said William Gordon Crawford, at the time and place and in manner and form in this count aforesaid, unlawfully did make and present, and cause to be made and presented, to a person in the civil service of the said United States, for approval by that person, and for payment by the said United States, a claim upon a department of the Government of the said United States, which said claim he the said William Gordon Crawford then and there knew to be false, fictitious and fraudulent; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

4. And the Grand Jurors aforesaid, upon their oath aforesaid, do further present, that the said William Gordon Crawford, on the seventh day of February, in the year of our Lord nineteen hundred and three, at Washington aforesaid in the said District of Columbia, unlawfully did make and present, and cause to be made and presented, to one Thomas W. McGregor, who then and there was a person in the civil service of the said United States, to wit, a clerk in the office of the General Superintendent of the Free Delivery System of the Post-Office Department of the said United States at Washington aforesaid, for approval by him as such clerk, and for payment out of the moneys of the said United States theretofore appropriated for the service of the same Department and the Free Delivery Service of the said United States, a certain other claim upon and against the said Post-Office Department, that is to say, a claim for the amount of a certain bill or account, in the total sum of two thousand, three hundred and seventy-four dollars and seventy-four cents, of the Postal Device and Lock Company, for one thousand and eleven carriers' satchels class A and fifty-one collectors' satchels class C, then lately before furnished by the said Postal Device and Lock Company to the said Post-Office Department under a certain contract, to wit, a written contract, dated the twenty-fifth day of June, in the year of our Lord nineteen hundred and two, between the said Postal Device and Lock Company and the said United States,
6 for the furnishing by that company to the said Post-Office Department, amongst other things, of satchels of the kinds in this count of this indictment mentioned, the said class A satchels at the price of two dollars and nineteen cents each and the said class C satchels at the price of three dollars and fifteen cents each, including in both cases a shoulder strap for each

satchel; which said Postal Device and Lock Company then, to wit, on the day in this count of this indictment first mentioned, was a corporation, organized under the laws of the state of New Jersey, of and for which he the said William Gordon Crawford then and there to wit, at Washington aforesaid, in the said District of Columbia, was vice-president, manager, attorney and agent; and that the last-mentioned claim then and there was false, fictitious and fraudulent in this, that, as he the said William Gordon Crawford then and there well knew, no shoulder strap had been furnished with or for any one of the satchels in this count of this indictment mentioned, so as aforesaid furnished to the said Post-Office Department, and no deduction on account of the absence of such shoulder straps, (they being valuable and necessary parts of the said satchels,) was then made in the said bill or account; and, further, that he the said William Gordon Crawford, at the time of so making and presenting the last-mentioned claim, and causing the same to be made and presented as aforesaid, at Washington aforesaid, in the said District of Columbia, well knew the same claim to be false, fictitious and fraudulent, as aforesaid, and intended then and there by means of the same to defraud the said United States out of such moneys as should be paid out of the said appropriation, to him on behalf of, or to, the said Postal Device and Lock Company, on account of the last-mentioned shoulder straps. And so the Grand Jurors aforesaid, upon their oath aforesaid, do say, that the said William Gordon Crawford, at the time and place and in manner and form in this count aforesaid, unlawfully did make and present, and cause to be made and presented, to a person in the civil service of the said United States, for approval by that person, and for payment by the said United States, a claim upon a Department of the Government of the said United States. which said claim he the said William Gordon Crawford then and there knew to be false, fictitious and fraudulent; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

MORGAN H. BEACH,
Attorney of the United States in and for the District of Columbia.

(Endorsed:) No. 23,866. United States, *vs.* William Gordon Crawford. Violation of Section 5438, R. S. U. S. Witnesses: Harry L. Halstead, Spencer Trask, W. S. Mayer, J. W. Herring. A true bill. A. M. McLachlen, Foreman.

7 Supreme Court of the District of Columbia

MONDAY, *November 27th*, 1905.

The Court resumes its Session pursuant to adjournment, Mr. Justice Wright presiding.

* * * * * * *

No. 23865.

Indicted for Violation of Section 5440, R. S. U. S.

UNITED STATES
vs.
WILLIAM G. CRAWFORD,

and

No. 23866.

Indicted for Violation of Section 5438, R. S. U. S.

UNITED STATES
vs.
WILLIAM GORDON CRAWFORD,

and

No. 24688.

Indicted for Violation of Section 5440, R. S. U. S.

UNITED STATES
vs.
WILLIAM G. CRAWFORD.

Come as well the Attorney of the United States as the defendant by his attorney, A. S. Worthington, Esq.; whereupon on motion of the Attorney for said defendant, it is by the Court ordered that, for the purposes and convenience of trial, the above indictments be, and they hereby are, consolidated.

Supreme Court of the District of Columbia.

TUESDAY, *November 28th*, 1905.

The Court resumes its Session pursuant to adjournment, Mr. Justice Wright presiding.

* * * * * * *

8 No. 23866.

Indicted for Violation Section 5438, R. S. U. S.

UNITED STATES
vs.
WILLIAM GORDON CRAWFORD.

Come as well the Attorney of the United States as the defendant in proper person, and by his Attorneys, Messrs. Worthington and Carlisle; and, thereupon, the defendant being arraigned, upon the indictment (the reading of which was waived by consent of the defendant), he pleads thereto not guilty, and for trial puts himself upon the country and the Attorney of the United States doth the like.

Supreme Court of the District of Columbia.

TUESDAY, *December* 19, 1905.

The Court resumes its Session pursuant to adjournment, Mr. Justice Wright presiding.

* * * * * * *

No. 23865.

Indicted for Violation of Section 5440, R. S. U. S.

UNITED STATES
vs.
WILLIAM G. CRAWFORD,

and

No. 23866.

Indicted for Violation of Section 5438, R. S. U. S.

UNITED STATES
vs.
WILLIAM GORDON CRAWFORD,

and

No. 24688.

Indicted for Violation of Section 5440, R. S. U. S.

UNITED STATES
vs.
WILLIAM G. CRAWFORD.

Come again the parties aforesaid in manner as aforesaid and the jury that was respited yesterday; and, thereupon, after argu-
9 ments of counsel and charge by the Court the jury, upon their oath say, that under indictment No. 23,865 the defendant is

not guilty; that under indictment No. 23,866, the defendant is guilty in manner and from as charged in the second, third and fourth counts, but not guilty as charged in the first count thereof; that under indictment No. 24,688 the defendant is guilty in manner and form as charged in the first count, but not guilty as charged in the fifth and sixth counts thereof; whereupon the defendant by his Attorney moves the Court to fix the amount of bail in this case, which motion is granted; and said bail is fixed in the sum of ten thousand dollars ($10,000); and, thereupon, the defendant enters into a recognizance in case No. 24,688 in the sum of Ten thousand dollars ($10,000) with The Title Guaranty and Trust Company of Scranton, Pa., as his surety approved by the Court, for his said defendant's appearance in this Court from day to day during the present and its subsequent terms and hear and receive the sentence of this Court in cases No. 23,866 and 24,688 when required, or if he, the said defendant depart the Court without its leave.

Motion in Arrest of Judgment.

Filed December 23, 1905.

In the Supreme Court of the District of Columbia, Holding a Criminal Term.

No. 23866, Criminal Doc.

UNITED STATES
vs.
WILLIAM G. CRAWFORD.

No. 24688, Criminal Doc.

UNITED STATES
vs.
WILLIAM G. CRAWFORD.

The defendant moves the court to arrest the judgment in the above consolidated cases as to counts two, three, and four of indictment No. 23,866, because:

1. None of said counts sets forth facts which constitute any offense against the United States.

2. In none of said counts is it stated either that Thomas W. McGregor had any power or authority to certify, approve or pay claims, bills or accounts of the kind referred to in said indictment, or claims, bills or accounts of any kind, nor if such power or authority existed how the same was conferred upon him.

A. S. WORTHINGTON,
Attorney for Defendant, William G. Crawford.

10 Supreme Court of the District of Columbia.

SATURDAY, *December* 30, 1905.

The Court resumes its Session pursuant to adjournment, Mr. Justice Wright presiding.

No. 23866.

Convicted of Violation of Section 5438, R. S. U. S. (3 Counts).

UNITED STATES
vs.
WILLIAM GORDON CRAWFORD,

and

No. 24688.

Convicted of Violation of Section 5440, R. S. U. S. (1 Count).

UNITED STATES
vs.
WILLIAM G. CRAWFORD.

Come as well the Attorney of the United States as the defendant in proper person according to his recognizance and by his Attorney A. S. Worthington, Esq., and, thereupon, the defendant's motion in arrest of judgment as to said indictment No. 23,866 coming on to be heard and argued by counsel, it is considered by the Court that said motion be, and it hereby is granted; whereupon it is considered that said defendant go thereof without day as to said indictment No. 23,866; and, thereupon, the defendant's motion for a new trial as to said indictment No. 24,688 coming on to be heard and argued by counsel, it is considered by the Court that said motion be, and it hereby is overruled; whereupon, it is demanded of the defendant what further he has to say why the sentence of the law should not be pronounced against him on the first count of said indictment No. 24,688, and he says nothing, except as he has already said; and, thereupon, it is considered by the court that for his said offense the defendant be taken by the Warden to the States Jail in and for the District of Columbia, thence to the Penitentiary (as designated by the Attorney-General of the United *United* States) there to be imprisoned and kept at labor for the period of two (2) years, to take effect from and including the date of his arrival at said Penitentiary; whereupon the defendant by his Attorney notes an appeal to the Court of Appeals of the District of Columbia from the judgment of this Court in this case No. 24,688; and, thereupon, the defendant by his attorney moves the Court to fix the amount of the bond for cost on said appeal, which motion is granted, and said bond is fixed in the sum of Fifty Dollars ($50.) and the Attorney of the United

States in open court waives the issuance of a writ of citation;
11 whereupon the defendant by his attorney moves the Court to fix the amount of the bail in said case No. 24,688, which motion is granted, and said bail is fixed in the sum of Ten Thousand Dollars ($10,000.); and, thereupon, the defendant enters into a recognizance in the sum of Ten Thousand Dollars ($10,000.) with The Title Guaranty and Trust Company of Scranton, Pa., as his surety approved by the Court, if the said defendant fail to forthwith surrender himself to the Marshal of this District to be dealt with and proceeded against according to law in case the judgment appealed from shall be affirmed, or the appeal for any cause dismissed, or the judgment be reversed and a new trial ordered, or, if the said defendant depart the Court without leave.

Indictment No. 23865.

Filed in Open Court July 31, 1903. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia, Holding a Criminal Court of the April Term, in the Year of Our Lord Nineteen Hundred and Three.

DISTRICT OF COLUMBIA, *sct:*

The Grand Jurors for the United States of America, inquiring for the District of Columbia, upon their oath present, that before and on the twenty-fifth day of June, in the year of our Lord nineteen hundred and two, and from thence until the first day of May in the year of our Lord nineteen hundred and three, and at the several times of the committing of the several offenses hereafter in this indictment mentioned, August W. Machen, late of the city of Washington, in the said District of Columbia at Washington aforesaid, in the said District of Columbia, was an officer of the said United States, that is to say, General Superintendent of the Free Delivery System in the Office of the First Assistant Postmaster-General of the said United States, and did, during the period aforesaid, there act as and perform the duties of such General Superintendent; that during the period aforesaid the said August W. Machen, by reason of his being such General Superintendent, and by reason of his acting as such General Superintendent and performing the duties of that office as aforesaid, under the law and the regulations theretofore and then pursuant to law prescribed and promulgated by the Postmaster-General of the said United States for the government of his department and the conduct of its officers and clerks, and then in force, was charged, amongst other things, with the consideration of allowances for carriers' equipments and other equipments and incidental expenses of the Free Delivery Service of the said United States, involving outlays and increases of expenditure of the moneys of the said United States appropriated by law for the service of the Post-Office Department of the said United States and the said Free Delivery Service,—of the prescribing and promulgating of which said

12 regulations he the said August W. Machen, during the period aforesaid, there had notice; and that during the said period, and by reason of his being and acting as such General Superintendent, it became and was the duty of the said August W. Machen, when discharging the duties with which he was so charged as aforesaid, to carefully guard the interests of the said United States and observe the laws thereof and the regulations aforesaid, and to preserve those interests in making allowances for carriers' equipments and other equipments and incidental expenses of the Free Delivery Service aforesaid; and that, because, as the Grand Jurors aforesaid, upon their oath aforesaid, charge the fact to be, special trust and confidence were reposed in him by his superior officers, the Postmaster-General and the First Assistant Postmaster-General of the said United States, and by the person or persons for the time being acting as such superior officers, by reason of his being and acting as such General Superintendent, it then and there also became and was the duty of the said August W. Machen, under the law and the said regulations, to faithfully and truthfully advise his said superior officers, or the person or persons acting as such, concerning all matters requiring their supervision and notice and pertaining to the discharge of his the said August W. Machen's said duties, and to inform them truly concerning all allowances considered by him in the discharge of his said duties, and concerning all bills and accounts rendered against the said United States and the said Post-Office Department in connection with such allowances and especially for carriers' satchels and collectors' satchels furnished to the said Post-Office Department under contract or otherwise; as it also then and there became and was the duty of the said August W. Machen to refuse to participate in or connive at any improper practice whereby the said United States might or should be defrauded in any manner relating to the allowances for such carriers' equipments and other equipments and incidental expenses of the said Free Delivery Service, or relating to contracts theretofore and then entered into between the said United States and persons, firms and corporations furnishing such carriers' equipments and other equipments to the said Post-Office Department.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, William G. Crawford, late of the said City of Washington, was Vice-President, Manager, and Attorney of and for the Postal Device and Lock Company, a corporation theretofore organized under the laws of the state of New Jersey and, during the period aforesaid, engaged in the business of furnishing to the said Post-Office Department, under a contract dated the said twenty-fifth day of June, in the year nineteen hundred and two, certain carriers' equipments and other equipments, involving outlays of the moneys of the said United States appropriated as aforesaid, that it to say, a large number of letter-carriers' satchels and collectors' satchels.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid and after the execution of the said contract, to wit, on the said twenty-fifth day of June,

in the year of our Lord nineteen hundred and two, at Wash-
13 ington aforesaid, in the said District of Columbia, the said August W. Machen, the said William G. Crawford, and George E. Lorenz, late of the city of Toledo, in the state of Ohio, and Martha J. Lorenz, late of Toledo aforesaid, wickedly devising and intending to cheat and defraud the said United States, unlawfully and fraudulently did conspire, combine, confederate and agree together, and with divers other persons to the said grand jurors unknown, to knowingly, wrongfully and corruptly defraud the said United States by causing the satchels which were to be delivered to the said Post-Office Department, under the said contract, to be delivered without any shoulder straps accompanying the same, contrary to the requirements of the said contract, (the said shoulder straps being necessary and valuable parts of such satchels),—by causing the bills or accounts of the said corporation for the said satchels, and rendered by it in connection with the delivery of such satchels, to be so rendered to the said Post-Office Department at the full contract price for such satchels, including shoulder straps, and without showing or containing any deduction from the amount of such bills or accounts respectively on account of the absence of such shoulder straps,—by the said August W. Machen, contrary to his said duties and the trust reposed in him as aforesaid, thereupon approving as correct bills or accounts so to be rendered, and recommending and securing the payment of the same by his said superior officers out of the moneys appropriated as aforesaid, notwithstanding such bills or accounts were to be false and fraudulent bills or accounts, as he the said August W. Machen then well knew, and notwithstanding they would purport to be bills or accounts rendered for satchels furnished in accordance with the said contract, when in fact the satchels charged for therein were not accompanied by any shoulder straps whatever, and no shoulder straps therefor were then or afterwards to be furnished by the said corporation to the said Post-Office Department,—and by thereupon dividing the moneys to accrue and be paid to the said corporation, out of the said appropriation, on account of the shoulder straps so to be charged for but not furnished, between them the said August W. Machen, William G. Crawford, George E. Lorenz and Martha J. Lorenz, upon some basis as to amounts concerning which the grand jurors aforesaid are not informed and can not make any statement in this indictment, and upon a plan whereby the share of such moneys thus accruing and paid to the said corporation which was to become due to the said August W. Machen from time to time, in accordance with the said unlawful conspiracy, combination, confederation and agreement, was to be transmitted to him the said August W. Machen from the said Postal Device and Lock Company by and through the agency of the said William G. Crawford, and George E. Lorenz, and sometimes of the said Martha J. Lorenz, with knowledge on the part of each of them, when so acting, of the fact that the same were moneys accruing in consequence of the said unlawful conspiracy, combination, confederation and agreement.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that, in pursuance of the said unlawful conspiracy,

combination, confederation and agreement, and to effect the
14 object of the same, the said William G. Crawford, afterwards, to wit, on the third day of October, in the year of our Lord nineteen hundred and two, at Washington aforesaid, in the said District of Columbia, unlawfully did present to the said Post-Office Department a certain bill or account of the said Postal Device and Lock Company against the said United States, to wit, a bill or account, in the sum of fifteen thousand and eight hundred dollars, for five thousand of the said satchels theretofore delivered to the said Post-Office Department under the said contract, of the kind referred to in the said contract as carriers' satchels class B, at three dollars and sixteen cents each, (that being the contract price for the last-mentioned satchels with shoulder straps), when in fact no shoulder straps whatever had been furnished with the same satchels by the said corporation; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

2. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said August W. Machen, William G. Crawford, George E. Lorenz and Martha J. Lorenz, on the thirteenth day of October, in the year of our Lord nineteen hundred and two, at Washington aforesaid in the said District of Columbia, under the circumstances and conditions set forth and described in the first count of this indictment, wickedly devising and intending to cheat and defraud the said United States, unlawfully and fraudulently did conspire, combine, confederate and agree together, and with divers other persons to the grand jurors aforesaid unknown, to knowingly, wrongfully and corruptly defraud the said United States in the manner and by the means set forth and described in the said first count; and that in pursuance of and further to effect the object of the said unlawful and corrupt conspiracy, combination, confederation and agreement, the said August W. Machen afterwards, to wit, on the day in this count aforesaid, at Washington aforesaid, in the said District of Columbia, unlawfully did place his signature upon the official voucher then accompanying and covering the bill or account in the said first count mentioned, next below the word "Correct" printed on the said voucher, and next above the words "General Superintendent" also printed on the said voucher, and thereby did officially approve the said bill or account as correct; which said signature then and there was and is of the tenor following, to wit: A. W. Machen; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

3. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said August W. Machen, William G. Crawford, George E. Lorenz and Martha J. Lorenz, on the fifteenth day of October, in the year of our Lord nineteen hundred and two, at Washington aforesaid, in the said District of Columbia, under the circumstances and conditions set forth and described in the first count of this indictment, wickedly devising and intending to cheat and defraud the said United States, un-

lawfully and fraudulently did conspire, combine, confederate
15 and agree together, and with divers other persons to the grand jurors aforesaid unknown, to knowingly, wrongfully and corruptly defraud the said United States in the manner and by the means set forth and described in the said first count; and that in pursuance of and further to effect the object of the said unlawful and corrupt conspiracy, combination, confederation and agreement, the said William G. Crawford afterwards, to wit, on the day in this count aforesaid, at Washington aforesaid, in the said District of Columbia, unlawfully did, in behalf of the said corporation, take, accept and receive from the said Post-Office Department a certain warrant for the payment of money, to wit, Post-Office Department Warrant No. 7015, bearing date of the day in this count aforesaid, drawn upon the Assistant Treasurer of the said United States at New York City, in the state of New York, for the payment of the sum of fifteen thousand and eight hundred dollars to the said Postal Device and Lock Company or its order, under the name and designation of Postal Device & Lock Co., in settlement of the bill or account in the said first count mentioned; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

4. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said August W. Machen, William G. Crawford, George E. Lorenz and Martha J. Lorenz, on the twenty-first day of October, in the year of our Lord nineteen hundred and two, at Washington aforesaid, in the said District of Columbia, under the circumstances and conditions set forth and described in the first count of this indictment, wickedly devising and intending to cheat and defraud the said United States, unlawfully and fraudulently did conspire, combine, confederate and agree together, and with divers other persons to the grand jurors aforesaid unknown, to knowingly, wrongfully and corruptly defraud the said United States in the manner and by the means set forth, and described in the said first count; and that in pursuance of and further to effect the object of the said unlawful and corrupt conspiracy, combination, confederation and agreement, the said William G. Crawford afterwards, to wit, on the day in this count aforesaid, at some place to the said grand jurors as yet unknown, unlawfully did write and draw a certain check, to wit, a check of the said Postal Device and Lock Company, bearing date of the day in this count aforesaid, upon Spencer Trask & Co., Bankers, of New York City, New York, for the payment of the sum of five thousand, four hundred and forty-one dollars and thirty-five cents to the order of the said George E. Lorenz: against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

5. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said August W. Machen, William G. Crawford, George E. Lorenz and Martha J. Lorenz, on the twenty-fourth day of October, in the year of our Lord nineteen hundred and two, at Washington aforesaid, in the said District of Columbia, under the

circumstances and conditions set forth and described in the
16 first count of this indictment, wickedly devising and intending to cheat and defraud the said United States, unlawfully and fraudulently did conspire, combine, confederate and agree together, and with divers other persons to the grand jurors aforesaid unknown, to knowingly, wrongfully and corruptly defraud the said United States in the manner and by the means set forth and described in the said First count; and that in pursuance of and further to effect the object of the said unlawful and corrupt conspiracy, combination, confederation and agreement, the said George E. Lorenz afterwards, to wit, on the day in this count aforesaid, at the city of Toledo, in the state of Ohio, unlawfully did deposit with The Home Savings Bank Company, to be credited to the account of the said Martha J. Lorenz with that company, the check mentioned and described in the fourth count of this indictment; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

6. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said August W. Machen, William G. Crawford, George E. Lorenz and Martha J. Lorenz, on the twenty-eighth day of October, in the year of our Lord nineteen hundred and two, at Washington aforesaid, in the said District of Columbia, under the circumstances and conditions set forth and described in the first count of this indictment, wickedly devising and intending to cheat and defraud the said United States, unlawfully and fraudulently did conspire, combine, confederate and agree together, and with divers other persons to the grand jurors aforesaid unknown, to knowingly, wrongfully and corruptly defraud the said United States in the manner and by the means set forth and described in the said first count; and that in pursuance of and further to effect the object of the said unlawful and corrupt conspiracy, combination, confederation and agreement, the said Martha J. Lorenz afterwards, to wit, on the day in this count aforesaid, at the said city of Toledo, in the state of Ohio, having then and there in her hands a certain draft dated October 27, 1902, and numbered 65191, drawn by the Society for Savings in the city of Cleveland, in the said state of Ohio, upon the American Exchange National Bank, of New York City, New York, for the payment of the sum of nine hundred dollars to the order of the said Martha J. Lorenz, unlawfully did endorse the said draft in blank by writing her name upon the back of the same draft: against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

7. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said August W. Machen, William G. Crawford, George E. Lorenz and Martha J. Lorenz, on the said twenty-eighth day of October, in the year of our Lord nineteen hundred and two, at Washington aforesaid, in the said District of Columbia, under the circumstances and conditions set forth and described in the first count of this indictment, wickedly devising and intending to cheat and defraud the said United States, unlawfully and fraudulently did

conspire, combine, confederate and agree together, and with
17 divers other persons to the grand jurors aforesaid unknown, to knowingly, wrongfully and corruptly defraud the said United States in the manner and by the means set forth and described in the said first count; and that in pursuance of and further to effect the object of the said unlawful and corrupt conspiracy, combination, confederation and agreement, the said George E. Lorenz afterwards, to wit, on the day in this count aforesaid, at Toledo aforesaid, in the state of Ohio, having then and there in his hands the draft mentioned and described in the sixth count of this indictment, with the endorsement of the said Martha J. Lorenz thereon as in that count aforesaid, unlawfully did write upon the back of the said draft, next above the said endorsement, the following words, to wit: Pay to the order of A. W. Machen: Against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

8. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said August W. Machen, William G. Crawford, George E. Lorenz and Martha J. Lorenz, on the thirtieth day of October, in the year of our Lord nineteen hundred and two, at Washington aforesaid, in the said District of Columbia, under the circumstances and conditions set forth and described in the first count of this indictment, wickedly devising and intending to cheat and defraud the said United States, unlawfully and fraudulently did conspire, combine, confederate and agree together, and with divers other persons to the grand jurors aforesaid unknown, to knowingly, wrongfully and corruptly defraud the said United States in the manner and by the means set forth and described in the said first count; and that in pursuance of and further to effect the object of the said unlawful and corrupt conspiracy, combination, confederation and agreement, the said August W. Machen afterwards, to wit, on the day in this count aforesaid, at Washington aforesaid in the said District of Columbia, having then and there in his hands the draft mentioned and described in the sixth count of this indictment with the endorsement of the said Martha J. Lorenz upon the same as in that count aforesaid, and with the words "Pay to the order of A. W. Machen" so written next above the said endorsement as in the seventh count set forth, unlawfully did write upon the back of the same draft, below the said endorsement and words, the following words and signature, to wit: Pay to Union Natl. Bank or order A. W. Machen: Against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

9. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said August W. Machen, William G. Crawford, George E. Lorenz and Martha J. Lorenz, on the first day of December, in the year of our Lord nineteen hundred and two, at Washington aforesaid, in the said District of Columbia, under the circumstances and conditions set forth and described in the first count of this indictment, wickedly devising and intending to cheat and defraud the said United States, unlawfully and fraudulently did con-

spire, combine, confederate and agree together, and with
18 divers other persons to the grand jurors aforesaid unknown, to knowingly, wrongfully and corruptly defraud the said United States in the manner and by the means set forth and described in the said first count; and that in pursuance of and further to effect the object of the said unlawful and corrupt conspiracy, combination, confederation and agreement, the said William G. Crawford afterwards, to wit, on the day in this count aforesaid, at Washington aforesaid, in the said District of Columbia, unlawfully did present to the said Post-Office department a certain other bill or account of the said Postal Device and Lock Company against the said United States, to wit, a bill or account, in the sum of five thousand and four hundred and eighty-one dollars and fifty-seven cents, for twenty-five hundred and three of the said satchels theretofore delivered to the said Post-Office Department under the contract mentioned in the first count of this indictment, of the kind referred to in the said contract as carriers' satchels class A, at two dollars and nineteen cents each, (that being the contract price for the last mentioned satchels with shoulder straps), when in fact no shoulder straps whatever had been furnished with the last-mentioned satchels by the said corporation; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

10. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said August W. Machen, William G. Crawford, George E. Lorenz and Martha J. Lorenz, on the sixteenth day of December, in the year of our Lord nineteen hundred and two, at Washington aforesaid, in the said District of Columbia, under the circumstances and conditions set forth and described in the first count of this indictment, wickedly devising and intending to cheat and defraud the said United States, unlawfully and fraudulently did conspire, combine, confederate and agree together, and with divers other persons to the grand jurors aforesaid unknown, to knowingly, wrongfully and corruptly defraud the said United States in the manner and by the means set forth and described in the said first count; and that in pursuance of and further to effect the object of the said unlawful and corrupt conspiracy, combination, confederation and agreement, the said August W. Machen afterwards, to wit, on the day in this count aforesaid, at Washington aforesaid, in the said District of Columbia, unlawfully did place his signature upon the official voucher accompanying and covering the bill or account in the ninth count of this indictment mentioned, next below the word "Correct" printed on the said voucher and next above the words "Gen. Supt. Free Delivery System" written and printed thereon, and thereby did officially approve the last-mentioned bill or account as correct; which said signature in this count mentioned then and there was and is of the tenor which here follows, to-wit: A. W. Machen; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

11. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said August W. Machen, William G.
19 Crawford, George E. Lorenz and Martha J. Lorenz, on the twentieth day of December, in the year of our Lord nineteen

hundred and two, at Washington aforesaid, in the said District of Columbia, under the circumstances and conditions set forth and described in the first count of this indictment, wickedly devising and intending to cheat and defraud the said United States, unlawfully did conspire, combine, confederate and agree together, and with divers other persons to the grand jurors aforesaid unknown, to knowingly, wrongfully and corruptly defraud the said United States in the manner and by the means set forth and described in the said first count; and that in pursuance of and further to effect the object of the said unlawful and corrupt conspiracy, combination, confederation and agreement, the said William G. Crawford afterwards, to-wit, on the day in this count aforesaid, at Washington aforesaid, in the said District of Columbia, unlawfully did, in behalf of the said Postal Device and Lock Company, corporation as aforesaid, accept and receive from the said Post-Office Department a certain other warrant for the payment of money, to-wit, Post-Office Department Warrant No. 12305, bearing date of the day in this count aforesaid, drawn upon the Assistant Treasurer of the said United States at New York City, in the state of New York, for the payment of the sum of five thousand, four hundred and eighty-one dollars and fifty-seven cents to the said corporation, under the name and designation of Postal Device & Lock Co., in settlement of the bill or account in the eighth count of this indictment mentioned; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

12. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said August W. Machen, William G. Crawford, George E. Lorenze and Martha J. Lorenz, on the twenty-second day of December, in the year of our Lord nineteen hundred and two, at Washington aforesaid, in the said District of Columbia, under the circumstances and conditions set forth and described in the first count of this indictment, wickedly devising and intending to cheat and defraud the said United States, unlawfully and fraudulently did conspire, combine, confederate and agree together and with divers other persons to the grand jurors aforesaid unknown, to knowingly, wrongfully and corruptly defraud the said United States in the manner and by the means set forth and described in the said first count; and that in pursuance of and further to effect the object of the said unlawful and corrupt conspiracy, combination, confederation and agreement, the said William G. Crawford afterwards, to wit, on the day in this count aforesaid, at some place to the said grand jurors unknown, unlawfully did write and draw a certain other check, to wit, a check of the said Postal Device and Lock Company, bearing date of the day in this count aforesaid, upon Spencer Trask & Co., Bankers, of New York City, New York, for the payment of the sum of nine hundred and ninety-two dollars and ninety cents to the order of the said George E. Lorenz by and under the name and designation of Geo. E. Lorenz: against the peace and dignity of the said United States and contrary to the form of the statute of the same in such case made and provided.

13. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said August W. Machen, William G. Craw-

ford, George E. Lorenz and Martha J. Lorenz, on the twenty-sixth day of December, in the year of our Lord nineteen hundred and two, at Washington aforesaid, in the said District of Columbia, under the circumstances and conditions set forth and described in the first count of this indictment, wickedly devising and intending to cheat and defraud the said United States, unlawfully and fraudently did conspire, combine, confederate and agree together, and with divers other persons to the grand jurors aforesaid unknown, to knowingly, wrongfully and corruptly defraud the said United States in the manner and by the means set forth and described in the said first count; and that in pursuance of and further to effect the object of the said unlawful and corrupt conspiracy, combination, confederation and agreement, the said George E. Lorenz afterwards, to wit, on the day in this count aforesaid, at Toledo aforesaid, in the state of Ohio, having in his hands a certain bill of exchange dated that day, numbered 46180, and drawn by The Home Savings Bank Company, of Toledo aforesaid, upon the National City Bank, of New York City, New York, for the payment of the sum of three hundred and seventy-two dollars and thirty-four cents to the order of him the said George E. Lorenz, unlawfully did then and there, to wit, at Toledo aforesaid, write upon the back of the said bill of exchange the following words and signature, to wit: Pay to the order of A. W. Machen Geo E Lorenz: against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

14. And the grand jurors aforesaid, upon their oath aforesaid do further present, that the said August W. Machen, William G. Crawford, George E. Lorenz and Martha J. Lorenz, on the fifth day of January, in the year of our Lord nineteen hundred and three, at Washington aforesaid, in the said District of Columbia, under the circumstances and conditions set forth and described in the first count of this indictment, wickedly devising and intending to cheat and defraud the said United States, unlawfully and fraudulently did conspire, combine, confederate and agree together, and with divers other persons to the grand jurors aforesaid unknown, to knowingly, wrongfully and corruptly defraud the said United States in the manner and by the means set forth and described in the said first count; and that in pursuance of and further to effect the object of the said unlawful and corrupt conspiracy, combination, confederation and agreement, the said August W. Machen afterwards, to wit, on the day in this count aforesaid, in the said District of Columbia, having in his hands the bill of exchange mentioned and described in the thirteenth count of this indictment with the words and signature written thereon as in the said thirteenth count set forth, unlawfully did write, next below the said words and signature, and upon the back of the same bill of exchange, the following words and signature, to wit: Pay to Union Nat'l Bank or order A. W.

21 Machen: against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

15. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said August W. Machen, William G. Craw-

ford, George E. Lorenz and Martha J. Lorenz, on the fifth day of January, in the year of our Lord nineteen hundred and three, at Washington aforesaid, in the said District of Columbia, under the circumstances and conditions set forth and described in the first count of this indictment, wickedly devising and intending to cheat and defraud the said United States, unlawfully and fraudulently did conspire, combine, confederate and agree together, and with divers other persons to the grand jurors aforesaid unknown, to knowingly, wrongfully and corruptly defraud the said United States in the manner and by the means set forth and described in the said first count; and that in pursuance of and further to effect the object of the said unlawful and corrupt conspiracy, combination, confederation and agreement, the said William G. Crawford afterwards, to wit, on the day in this count aforesaid, at Washington aforesaid, in the said District of Columbia, unlawfully did present to the said Post-Office Department a certain other bill or account of the said Postal Device and Lock Company against the said United States, to wit, a bill or account, in the sum of three thousand, three hundred and thirty-seven dollars and two cents, for fifteen hundred and eighteen of the satchels in the said first count mentioned, theretofore delivered to the said Post-Office Department under the contract in the said first count mentioned, of the kind referred to in the said contract as carriers' satchels class A, at two dollars and nineteen cents each, (that being the contract price for the same with shoulder straps,) and for four of the same satchels, theretofore delivered to the said Post-Office Department under the said contract, of the kind referred to in the said contract as collectors' satchels class C, at three dollars and fifteen cents each, (that being the contract price for the last-mentioned satchels with shoulder straps,) when in fact no shoulder straps whatever had been furnished with any of the satchels in this count mentioned by the said corporation; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

16. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said August W. Machen, William G. Crawford, George E. Lorenz and Martha J. Lorenz, on the thirteenth day of January, in the year of our Lord nineteen hundred and three, at Washington aforesaid, in the said District of Columbia, under the circumstances and conditions set forth and described in the first count of this indictment, wickedly devising and intending to cheat and defraud the said United States, unlawfully and fraudulently did conspire, combine, confederate and agree together, and with divers other persons to the grand jurors aforesaid unknown, to knowingly, wrongfully and corruptly defraud the said United States in the manner and by the means set forth and described in the said first count; and that in pursuance of and further to effect the ob-
22 ject of the said unlawful and corrupt conspiracy, combination, confederation and agreement, the said August W. Machen afterwards, to wit, on the day in this count aforesaid, at Washington aforesaid, in the said District of Columbia, unlawfully did place his signature upon the official voucher then accompanying and covering the bill or account in the fifteenth count of this indictment

mentioned, next below the word "Correct" printed on the said voucher, and next above the words "Gen'l Supt. Free Delivery System" also written and printed on the said voucher, and thereby did officially approve the same bill or account as correct; which last-mentioned signature then and there was and is of the tenor following, to wit: A. W. Machen; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

17. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said August W. Machen, William G. Crawford, George E. Lorenz and Martha J. Lorenz, on the fifteenth day of January, in the year of our Lord nineteen hundred and three, at Washington aforesaid, in the said District of Columbia, under the circumstances and conditions set forth and described in the first count of this indictment, wickedly devising and intending to cheat and defraud the said United States, unlawfully and fraudulently did conspire, combine, confederate and agree together, and with divers other persons to the grand jurors aforesaid unknown, to knowingly, wrongfully and corruptly defraud the said United States in the manner and by the means set forth and described in the said first count; and that in pursuance of and further to effect the object of the said unlawful and corrupt conspiracy, combination, confederation and agreement, the said William G. Crawford afterwards, to wit, on the day in this count aforesaid, in the said District of Columbia, unlawfully did, in behalf of the said Postal Device and Lock Company, corporation as aforesaid, take, accept and receive from the said Post-Office Department a certain other warrant for the payment of money, towit, Post Office Department Warrant No. 13418, bearing date of the day in this count aforesaid, drawn upon the Assistant Treasurer of the said United States at New York City, in the state of New York, for the payment of the sum of three thousand, three hundred and thirty-seven dollars and two cents to the said Postal Device and Lock Company or its order, under the name and designation of Postal Device & Lock Co., in settlement of the bill or account in the fifteenth count of this indictment mentioned; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

18. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said August W. Machen, William G. Crawford, George E. Lorenz and Martha J. Lorenz, on the seventeenth day of January, in the year of our Lord nineteen hundred and three, at Washington aforesaid, in the said District of Columbia, under the circumstances and conditions set forth and described in the first count of this indictment, wickedly devising and intending to

23 cheat and defraud the said United States, unlawfully and fraudulently did conspire, combine, confederate and agree together, and with divers other persons to the grand jurors aforesaid unknown, to knowingly, wrongfully and corruptly defraud the said United States in the manner and by the means set forth and described in the said first count; and that in pursuance of and further to effect the object of the said unlawful and corrupt conspiracy, combination, confederation and agreement, the said William G. Craw-

ford afterwards, to wit, on the day in this count aforesaid, at some place to the said grand jurors as yet unknown, unlawfully did write and draw a certain other check, to wit, a check of the said Postal Device and Lock Company, bearing date of the day in this count aforesaid, upon Spencer Trask & Co., Bankers, of New York City, New York, for the payment of the sum of six hundred and eighty-six dollars and forty-six cents to the order of the said George E. Lorenz by and under the name and designation of Geo. E. Lorenz: against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

19. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said August W. Machen, William G. Crawford, George E. Lorenz and Martha J. Lorenz, on the twenty-second day of January, in the year of our Lord nineteen hundred and three, at Washington aforesaid, in the said District of Columbia, under the circumstances and conditions set forth and described in the first count of this indictment, wickedly devising and intending to cheat and defraud the said United States, unlawfully and fraudulently did conspire, combine, confederate and agree together, and with divers other persons to the grand jurors aforesaid unknown, to knowingly, wrongfully and corruptly defraud the said United States in the manner and by the means set forth and described in the said first count; and that in pursuance of and further to effect the object of the said unlawful and corrupt conspiracy, combination, confederation and agreement, the said George E. Lorenz afterwards, to wit, on the day in this count aforesaid, at Toledo aforesaid, in the state of Ohio, unlawfully did deposit with the Home Savings Bank Company, to be credited to the account of the said Martha J. Lorenz with that company the check mentioned and described in the eighteenth count of this indictment: against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

20. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said August W. Machen, William G. Crawford, George E. Lorenz and Martha J. Lorenz, on the twenty-seventh day of January, in the year of our Lord nineteen hundred and three, at Washington aforesaid, in the said District of Columbia, under the circumstances and conditions set forth and described in the first count of this indictment, wickedly devising and intending to cheat and defraud the said United States, unlawfully and fraudulently did conspire, combine, confederate and agree together, and
24 with divers other persons to the grand jurors aforesaid unknown, to knowingly, wrongfully and corruptly defraud the said United States in the manner and by the means set forth and described in the said first count; and that in pursuance of and further to effect the object of the said unlawful and corrupt conspiracy, combination, confederation and agreement, the said August W. Machen afterwards, to wit, on the day in this count aforesaid, at Washington aforesaid, in the said District of Columbia, having in his hands a certain check then lately before drawn by the said George E. Lorenz upon the National Bank of Commerce, of Toledo, Ohio, for the payment of the sum of two hundred seventy-five dol-

lars and forty-two cents, unlawfully did present the same at the Union Savings Bank, of Washington aforesaid to be (as the same then and there was) cashed by the last-named bank; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

MORGAN H. BEACH,
Attorney of the United States in and for the District of Columbia.

Endorsed: No. 23,865. United States *vs.* August W. Machen, William. G. Crawford, George E. Lorenz and Martha J. Lorenz. Violation of Section 5440 R. S. U. S. Witnesses: W. Reginald Lews, J. W. Hering, Harry L. Halsted, Spencer Trask, W. S. Mayer. A true bill, A. M. McLachlen, foreman.

Supreme Court of the District of Columbia.

MONDAY, *November* 27, 1905.

The Court resumes its Session pursuant to adjournment, Mr. Justice Wright presiding.

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No. 23865.

Indicted for Violation of Section 5440 R. S. U. S.

UNITED STATES
vs.
AUGUST W. MACHEN, WILLIAM G. CRAWFORD, GEORGE E. LORENZ, and MARTHA J. LORENZ.

Come as well the Attorney of the United States as one of the defendants, William G. Crawford, and by his Attorney, A. S. Worthington, Esq., whereupon, on motion of the Attorney for said defendant, Crawford, it it ordered, that he, said defendant, Crawford, be granted a severance in the trial of this case.

Memorandum.

For Order Consolidating cause No. 23865 with causes Nos. 23866 and 24688, see page No. 12 of this record.

25 Supreme Court of the District of Columbia.

TUESDAY, *November* 28, 1905.

The Court resumes its Session pursuant to adjournment, Mr. Justice Wright presiding.

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No. 23865.

Indicted for Violation Section 5438 R. S. U. S.

UNITED STATES
vs.
WILLIAM GORDON CRAWFORD.

Come as well the Attorney of the United States as the defendant in proper person and by his Attorneys Messrs. Worthington and Carlisle; and, thereupon the defendant being arraigned upon the indictment (the reading of which was waived by consent of the defendant), he pleads thereto not guilty and for trial puts himself upon the country and the Attorney of the United States doth the like

Memorandum.

December 19th, 1905.—For Verdict under Indictment No. 23865, see page 14 of this record.

Indictment No. 24688.

Filed in Open Court April 3, 1905. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia, Holding a Criminal Term, January Term, A. D. 1905.

DISTRICT OF COLUMBIA, *ss:*

The Grand Jurors of the United States of America, in and for the District of Columbia aforesaid, upon their oath do present:

That before and on the first day of April in the year of our Lord one thousand nine hundred and two, and from thence hitherto, and at the time of the commission of the offense hereinafter in this count set forth, and at the respective times of the commission of the several offenses hereinafter in the several other counts of this indictment set forth, and at the District aforesaid, there were and have been in use in the postal service of the said United States great numbers of certain bags or satchels for the reception and carriage by the letter-carriers in the said postal service of mail matter, some of which bags or satchels were and are called letter-carriers' satchels, and some of which were and are called collectors' satchels, all of which
26 satchels were and are purchased by the said United States, through the proper officers of the Post Office Department of

the said United States, and were and are furnished by the said Department to the said letter-carriers for use by the said carriers in the delivery and collection of mail;

And that in the administrative arrangement of the business of the said Post Office Department, and in accordance with the organization of the said Department and the division of business therein, at and during the time and times aforesaid, and at the District aforesaid, there was in the said Department an office designated and known as the office of the First Assistant Postmaster General, which office was in the charge and under the management of an officer of the said United States and of the said Department, who was called and known as the First Assistant Postmaster General; and that to the said office were assigned among other duties, the general supervision and control of the post offices of the said United States and the purchase of supplies for the postal service of the said United States, included in which supplies were such satchels:

And that in the administrative arrangement of the business of the said office of the said First Assistant Postmaster General, and in accordance with the organization of the said office and the division of business therein, at and during the time and times aforesaid, and at the District aforesaid, there was in the said office a division designated as the division of free delivery, and that the said division of free delivery, at and during the time and times aforesaid, and at the District aforesaid, was under the management and control of an officer and employee of the said United States and of the said Department, who was known and designated as the General Superintendent of the Free Delivery System:

And that before and on the said first day of April in the year of our Lord one thousand, nine hundred and two, and from the day last aforesaid until the first day of May in the year of our Lord one thousand, nine hundred and three, at the District of Columbia, one August W. Machen, late of the said District, was such General Superintendent of the Free Delivery System, and as such General Superintendent of the Free Delivery System had the management and control of the said division of free delivery; and that at and during the said time and times, at the District aforesaid, the said August W. Machen, as such General Superintendent of the Free Delivery System, was an officer and employee of the said United States and of the said Department, and as such General Superintendent of the Free Delivery System was a person acting for and on behalf of the said United States in the said office of the said First Assistant Postmaster General and in the said Post Office Department of the said United States, in an official capacity, under and by virtue of the authority of the said Post Office Department; and that the said August W. Machen did, at and during the time and times aforesaid, and at the District aforesaid, act as such General Superintendent and did assume and undertake to perform the duties of the said office:

And that at and during the time and times aforesaid, and at the District aforesaid, it was the duty and custom of the said First Assistant Postmaster General, in accordance with the provisions
27 of the law then and there in force, at stated times to cause advertisements to be prepared for publication and to be pub-

lished in divers newspapers and by other means of publication, giving public notice that the said Post Office Department invited bids or proposals for the furnishing to the said Department of the aforesaid satchels; that in and by such advertisements reference would be made to certain documents, known and designated as specifications, which, by the terms of said advertisements were obtainable on application to either the said First Assistant Postmaster General, or the said General Superintendent of Free Delivery, and which said specifications were prepared in the division of Free Delivery aforesaid, and under the supervision and approval of the General Superintendent of the Free Delivery System aforesaid, and which said specifications set out and stated in detail the descriptions of the said satchels desired and sought to be purchased by the said Department, and the requirements of the said Department in respect of the form, dimensions, materials, workmanship and other qualities of the said satchels; that in and by such advertisements a day would be fixed and designated, until which day such bids or proposals would be received by the said Department, and on or after which day such bids or proposals as should be received by the said Department would be opened, examined and considered; and that when such bids or proposals would be received by the said Department, the same would be referred and submitted to a committee appointed by the Postmaster General of the United States, upon the advice and recommendation of the said General Superintendent of the Free Delivery System, to be opened, examined and considered by the said committee; that after such examination and consideration, it was the duty of the said committee to report to the said Postmaster General the names of the persons making such bids, the prices designated by each of the said persons respectively, and such other information relative to the said bids as was necessary to enable the said First Assistant Postmaster General, to whom, under the law and practice of the Department aforesaid the whole matter would be referred by the said Postmaster General, to form a proper judgment in respect to the proper and advantageous action to be had and taken by the said Department in respect of such bids, and that thereupon it became, and was the duty of the said General Superintendent of the Free Delivery System, under the law and practice aforesaid, to advise and make recommendations to the said First Assistant Postmaster General to consider what action should be taken by the said Department in the premises, and to advise and make recommendation to the Postmaster General in respect of such action; and that, after it had been, by the said Postmaster General, determined which one of such bids should be accepted, a contract would be made by the said Postmaster General in the name and on behalf of the said United States with the person or persons, firm or corporation whose bid had been so accepted, by the terms of which contract the said United States agreed to purchase of such bidder or bidders for a period of four years from some certain date named and fixed in and by the said contract, so many of the said satchels as should, from
28 time to time, during the said period, be needed by the said Department, at such prices and upon such conditions as

should be fixed and stated in the said contract; and that thereafter, that is to say, after the making of such contract, it was the duty and custom of the said General Superintendent of the Free Delivery System, from time to time, as and when, in the judgment of the General Superintendent of the Free Delivery it became and was necessary, in the interest of the said postal service, to procure for use in the said postal service, any of the said satchels, to advise and recommend to the said First Assistant Postmaster General the purchase thereof; and that, whenever any purchases of such satchels had been made, and bills had been rendered to the said Department for the price of such satchels purchased, it was the duty and custom of the said General Superintendent of the Free Delivery System to examine such bills and to approve such of the same as he, the said General Superintendent of the Free Delivery System, found to be correct, just and proper to be paid and to report such approval to the said First Assistant Postmaster General with the recommendation of him, the said General Superintendent of the Free Delivery System, that the said bills so approved should be paid:

And that, at and during the time and times aforesaid, and at the District aforesaid, the said August W. Machen, as such General Superintendent of the Free Delivery System, was, by the laws of the United States and by the regulations theretofore, pursuant to law, prescribed and promulgated by the Postmaster General for the government of the said Department and the conduct of its officers and clerks, and then in force, of the prescribing and promulgating of which regulations the said August W. Machen then and there had notice and knowledge, and by the custom and practice of the said Department then and there in the said Department used and observed, of which custom and practice he, the said August W. Machen then and there had notice and knowledge, charged with the duties, among others, of assisting and advising the First Assistant Postmaster General in the preparation and publication of the said advertisements inviting bids or proposals for furnishing to the said Department the said satchels when and as it became necessary to prepare and publish such advertisements, and of preparing for the said First Assistant Postmaster General the said specifications, and of submitting the said specifications so prepared to the said First Assistant Postmaster General for the consideration of the said First Assistant Postmaster General, and of advising the said First Assistant Postmaster General in respect to the form, contents, substance and requirements of the said specifications, and of recommending to the said First Assistant Postmaster General from time to time such additions to, and such other alterations and modifications of the said specifications and the requirements thereof as to him, the said August W. Machen, in the exercise of his honest judgment, might seem desirable in the interest of the said postal service, and of advising the said First Assistant Postmaster General in respect to the awarding of the contracts aforesaid, for the purchase of such satchels by the said Department, whenever it became necessary to make such a contract,

29 and of advising and recommending to the said First Assistant Postmaster General, from time to time, as proper occasion

therefor arose, the purchase under such contract of such quantities and such styles or kinds of the said satchels as to him, the said August W. Machen, in the exercise of his honest judgment seemed to be required by the needs of the said postal service, and of ascertaining and reporting to the said First Assistant Postmaster General from time to time whether the purchase of such satchels was required for use in the said postal service, and of ascertaining and reporting to the said First Assistant Postmaster General, from time to time, the number and the styles or kinds of such satchels which were required for use in the said postal service, and of advising in good faith the said First Assistant Postmaster General in the premises, and of recommending in good faith to the said First Assistant Postmaster General that such purchases should be made in such numbers and such styles or kinds of the said satchels, when such purchases should be found and deemed by him, the said August W. Machen, in good faith, to be necessary for such use, and of examining such bills as were rendered by the person or persons having entered into the contract aforesaid, for the price of such of the said satchels as had been purchased by the said United States under the contract aforesaid, and of advising and recommending to the said First Assistant Postmaster General the payment of such of the said bills as to him, the said August W. Machen, in the exercise of good faith and of his honest judgment, seemed true, correct, just and proper to be paid;

And that, at and during the time and times aforesaid, and at the District aforesaid, in the usual course of business in the said office of the said First Assistant Postmaster General and in the said Post Office Department, and because, as the grand jurors aforesaid, upon their oath aforesaid, charge the fact to be, special trust and confidence were reposed in the said August W. Machen by the said First Assistant Postmaster General and by the said Postmaster General, and by the persons for the time being acting as such officers respectively, the said specifications respecting the said satchels would be drawn by and under the supervision of the said August W. Machen, as such General Superintendent of the Free Delivery System; and that the said specifications, having been so drawn, would be approved and adopted by the said First Assistant Postmaster General, upon and in accordance with the advice and recommendation of the said August W. Machen, as such General Superintendent; and that the said contracts for the furnishing of the said satchels to the said Department, when and as it became necessary and proper to make such contracts, would be, by the said First Assistant Postmaster General recommended to be made upon and in accordance with the advice and recommendation of the said August W. Machen as such General Superintendent; and that purchases of the said satchels would be made, from time to time by the said First Assistant Postmaster General, upon and in accordance with the advice and recommendation of the said August W. Machen, as such General Superintendent, and in such numbers and of such styles and kinds as were recommended by the said August W. Machen, as such General Superintendent; and that bills for the price of the said satchels so purchased would be ordered by the said First Assistant Postmaster General

to be paid upon and in accordance with the advice and recommendation of the said Machen, as such General Superintendent; and that each and all the premises and several premises hereinbefore stated, were then and there well known to and well understood by the said August W. Machen, and were also then and there well known to and well understood by one William G. Crawford and one George E. Lorenz, who are hereinafter in this count and in the several succeeding counts of this indictment mentioned:

And that, at and during the time and times aforesaid, and at the District aforesaid, by reason of the premises, it became and was the duty of the said August W. Machen, as such General Superintendent of the Free Delivery System, and when and while he acted as such General Superintendent and assumed to perform the duties with which he, as such general superintendent, was charged as aforesaid, carefully and to the extent of his ability to guard the interests of the said United States and to promote such interests in respect of all the several matters and things in respect of and concerning which it was, as aforesaid, the duty of him, the said August W. Machen, to act, or to report, or to advise or to make recommendations to the said First Assistant Postmaster General and the said Postmaster General; and it was also then and there the duty of the said August W. Machen, as such General Superintendent, truly, honestly, in good faith, and with a view to promoting the interests of the said United States, to report to and advise the said First Assistant Postmaster General in respect of all and several the said matters and things in respect of and concerning which it was, as aforesaid, the duty of him, the said August W. Machen, to act or to report or to advise or to make recommendations to the said First Assistant Postmaster General and the said Postmaster General; and it was also then and there the duty of the said August W. Machen as such General Superintendent and by reason of his acting as such General Superintendent as aforesaid, not to participate in or connive at any improper practice, or to suppress or to conceal from the said First Assistant Postmaster General and the said Postmaster General any knowledge which he, the said August W. Machen, might or did at any time have or obtain concerning the existence or the exercise or the attempted exercise of any improper practice by any other person or persons whatsoever, by which improper practice the said United States might or should be prejudiced in any manner in respect of any of the said matters in respect of which he, the said August W. Machen, was charged as aforesaid with the duty of informing and advising and making recommendations to the said First Assistant Postmaster General and the said Postmaster General:

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That at and during the time and times aforesaid, and at the District aforesaid, one William G. Crawford, late of the said District, was an officer, agent and attorney of and for the Postal Device and Lock Company, a body corporate, theretofore organized under
31 the laws of the State of New Jersey, and then and there, at the time and place aforesaid, engaged in the business of sell-

ing and furnishing to the said Post Office Department divers articles used in the said postal service:

And that, during the period aforesaid, and on the sixth day of May in the year of our Lord one thousand nine hundred and two, at the District aforesaid, the said First Assistant Postmaster General, acting upon the advice of the said August W. Machen, as General Superintendent of the Free Delivery System as aforesaid, had caused advertisements to be published and specifications to be prepared, in the manner and to the purpose hereinbefore stated and set forth, by which advertisements public notice was given that the said Post Office Department desired and invited bids or proposals for the furnishing to the said Department such supplies of the said letter carriers' satchels and collectors' satchels as might and should be needed by the said Department during the period of four years to begin on the first day of July in the year of our Lord one thousand nine hundred and two; and that it was the intention and purpose of the said Department to enter into a contract with some person or persons, firm or corporation, for the purpose of procuring such supplies of the said satchels as might be needed by the said Department during the said period of four years; and that, in accordance with the terms of the advertisements aforesaid, it was the intention and purpose of the said Department to receive such bids of the character aforesaid, until and on the sixth day of June in the year of our Lord one thousand nine hundred and two, and on and after the said day last named to make the said contract with such bidder as might offer the bid which, by the said Department and by the proper officers of the said Department, might and should be found and deemed to be most advantageous and proper for the said Department to accept, and that specifications would be furnished upon application by letter to the First Assistant Postmaster General or to the General Superintendent of the Free Delivery System; all of which premises, the Grand Jurors aforesaid, upon their oath aforesaid, do charge were then and there, to wit, on the day last mentioned, at the District aforesaid, known to the said August W. Machen, the said William G. Crawford and the said George E. Lorenz.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That on the third day of June in the year of our Lord one thousand nine hundred and two, and during the period aforesaid, and at the District aforesaid, and before the expiration of the period within which bids of the character aforesaid in accordance with the said advertisements might be presented to the said Department and would be received by the said Department, and before the awarding by the said Department of any contract for the furnishing of the said satchels to the said Department for the said period of four years to begin on the said first day of July in the year of our Lord one thousand nine hundred and two, the said August W. Machen, the said William G. Crawford, and one George E. Lorenz, hereinbefore mentioned, late of the City of Toledo, in the State of Ohio, all well
32 knowing all and singular the premises hereinbefore stated and set forth, wickedly devising and intending to cheat and

defraud the said United States, unlawfully and fraudulently did conspire, combine, confederate and agree together, and with divers other persons to the said Grand Jurors unknown, knowingly, wrongfully and corruptly to defraud the said United States in the dishonest manner and through and by means of the dishonest scheme and arrangement following, that is to say:

That the said William G. Crawford should advise and procure the said Postal Device and Lock Company to offer to the said Post Office Department a bid for furnishing to the said Department so many of the said satchels as might and should be needed by the said Department during the said period of four years from the said first day of July next thereafter ensuing; and that the said William G. Crawford should, at the same time, induce and persuade the said Postal Device and Lock Company, before the said offering of the said bid, to enter into a contract with the said George E. Lorenz, by the terms of which contract it should be agreed, among other things, by and between the said Postal Device and Lock Company and the said George E. Lorenz that, in the event that the said bid of the said Postal Device and Lock Company should be accepted by the said Post Office Department and the said contract for furnishing the said satchels to the said Department should be by the said Department awarded to the said Postal Device and Lock Company, then, whenever and so often as the said Postal Device and Lock Company should under such contract sell and furnish the said Department any number of such satchels and receive from the said Department payment for the same, the said Postal Device and Lock Company should allow and pay over to the said George E. Lorenz all and so much of such payment so to be made by the said Department as should remain after the said Postal Device and Lock Company should have paid for the cost of manufacturing and delivering such satchels so to be sold and furnished and should have retained for itself, the said Postal Device and Lock Company, out of such payment so to be made, an additional sum equal to twenty-five cents for each of the said satchels so to be sold and furnished.

And it was, then and there, to wit, on the said third day of June in the year of our Lord one thousand nine hundred and two, and at the District aforesaid, further agreed by and between the said William G. Crawford, the said August W. Machen and the said George E. Lorenz, in accordance with and as a part of the said dishonest scheme and arrangement for the defrauding of the said United States, that all the moneys and each of the said several sums of money which, in accordance with and by virtue of the said contract between the said Postal Device and Lock Company and the said George E. Lorenz, might and were to be from time to time paid by the said Postal Device and Lock Company to the said George E. Lorenz out of all payments made to the said Postal Device and Lock Company by the said United States for such of the said satchels as were to be sold and furnished to the said Department under and in accordance with the said contract to that end to be made as aforesaid, should
33 be divided between them, the said William G. Crawford, the said August W. Machen, and the said George E. Lorenz, in

certain proportions and upon some certain basis and principle of division as to which the said Grand Jurors are not informed and cannot in this indictment make any averment, and upon a plan and by a method whereby the share and shares of the said moneys thus to be allotted and paid to the said August W. Machen, from time to time, in accordance with the said unlawful conspiracy, confederation and agreement, should be transmitted to him, the said August W. Machen, by and through the agency of the said William G. Crawford and the said George E. Lorenz, and that the said August W. Machen should, from time to time, whenever and so often as such payments might and should be paid by the said Department on account of any of the said satchels so to be sold and furnished by the said Postal Device and Lock Company, receive and accept from and through the said William G. Crawford and the said George E. Lorenz a certain share of all such payments, the proportion and amount of such share being to the said Grand Jurors as aforesaid unknown, the said August W. Machen being then and there, to wit, on the day last aforesaid, at the District aforesaid, as aforesaid, an officer of the said United States and the General Superintendent of the Free Delivery System and charged with and performing as such officer and as such General Superintendent the several duties hereinbefore stated and set forth, and the said William G. Crawford and the said George E. Lorenz, then and there, to wit, on the day last aforesaid, at the District aforesaid, well knowing that the said August W. Machen was such officer and such General Superintendent and charged with and performing the said duties:

And the grand jurors aforesaid, upon their oath aforesaid, do further present:

That thereafter, that is to say, on the twenty-fifth day of June in the year of our Lord one thousand nine hundred and two, at the District aforesaid, said Postmaster General, in the name and on behalf of the said United States, did make and enter into a certain contract with the said Postal Device and Lock Company, by the terms of which contract the United States agreed to purchase from the said Postal Device and Lock Company, at certain prices fixed and stated in the said contract, so many of the said satchels as might and should be needed by the said Department in the said postal service during the period of four years to begin on the said first day of July in the year of our Lord one thousand nine hundred and two.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That thereafter, that is to say, on the third day of October in the year of our Lord one thousand nine hundred and two, at the District aforesaid, in pursuance of the said unlawful conspiracy, confederation, combination and agreement, and to effect the object of the same, the said William G. Crawford unlawfully did present, and cause to be presented to the said Post Office Department, in the name and on account of the said Postal Device and Lock Company, a certain bill against the said United States, that is to say, a certain bill or
34 account in and for the sum of fifteen thousand eight hundred dollars, for five thousand of the said satchels, which said

satchels had been sold and delivered by the said Postal Device and Lock Company to the said Post Office Department at the price of three dollars and sixteen cents for each of said satchels, in accordance with and in pursuance of the said contract hereinbefore mentioned and stated to have been made and entered into by and between the said United States and the said Postal Device and Lock Company on the said twenty-fifth day of June in the year of our Lord one thousand nine hundred and two.

And that thereafter, that is to say, on the thirteenth day of October in the year of our Lord one thousand nine hundred and two, at the District aforesaid, in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and further to effect the object of the same, the said August W. Machen, being then and there as aforesaid the General Superintendent of the Free Delivery System, unlawfully did write and place upon the face of the said bill or account, for the sum of fifteen thousand eight hundred dollars, which is hereinbefore mentioned and stated to have been presented to the said Post Office Department by the said William G. Crawford on the said third day of October in the year of our Lord one thousand nine hundred and two, the words following, that is to say: "Approved A. W. Machen, genl. supt. F. D. system"; and the said August W. Machen did thereby, then and there, officially and in his capacity as General Superintendent of the Free Delivery System aforesaid, approve the said bill as correct:

And that thereafter, that is to say, on the fifteenth day of October in the year of our Lord one thousand nine hundred and two, at the District aforesaid, in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and further to effect the object of the same, the said William G. Crawford unlawfully did take, receive and accept from the said Post Office Department a certain warrant for the payment of money, the said warrant being designated as Post Office Department Warrant No. 7015, and bearing date of the said fifteenth day of October in the year of our Lord one thousand nine hundred and two, and drawn upon the Treasurer of the United States and payable by the said Assistant Treasurer of the United States at New York, for the payment of fifteen thousand eight hundred dollars to the said Postal Device and Lock Company or its order, under the name and designation of Postal Device and Lock Co., the said warrant being issued in payment of the said bill or account hereinbefore mentioned and stated to have been presented to the said Post Office Department by the said William G. Crawford.

And that thereafter, that is to say, on the twenty-first day of October in the year of our Lord one thousand nine hundred and two, at the District aforesaid, in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said William G. Crawford unlawfully did write and draw a certain check, that is to say, a check of the said Postal Device and Lock Company, bearing date of the said
35 twenty-first day of October in the year of our Lord one thousand nine hundred and two, upon Spencer Trask and Company, Bankers, of New York City, in the state of New York, for the

payment of the sum of five thousand four hundred and forty-one dollars and thirty-five cents to the order of the said George E. Lorenz; and that, thereafter, that is to say, upon the day last aforesaid and at the District aforesaid, the said William G. Crawford unlawfully did send and transmit the said check to the said George E. Lorenz:

And that thereafter, that is to say, on the twenty-eighth day of October in the year of our Lord one thousand nine hundred and two, at the City of Toledo in the State of Ohio, the said George E. Lorenz having received from the said William G. Crawford the said check hereinbefore stated to have been drawn by the said William G. Crawford in favor of him the said George E. Lorenz, and the said George E. Lorenz having caused the amount of the said check to be paid to him the said George E. Lorenz, in further pursuance of the said unlawful agreement and to effect the object of the same, unlawfully did send and transmit, by means of a certain draft then and there procured by him the said George E. Lorenz, to the said August W. Machen the sum of nine hundred dollars; against the form of the statute in such case made and provided, and against the peace and Government of the said United States.

Second Count.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That before and on the first day of April in the year of our Lord one thousand nine hundred and two, and from thence continuously until the first day of May in the year of our Lord one thousand nine hundred and three, at the District aforesaid, the letter carriers' satchels and the collectors' satchels which are mentioned in the first count of this indictment, were in use in the postal service of the said United States by the said Post Office Department of the said United States and were purchased by the said United States after the publication of advertisements and the making of contracts of such character and to such purpose and effect as are stated and set forth in the said first count, and were furnished to the letter carriers employed in said postal service, all in the manner and according to the custom, usage and course of business stated and set forth in the said first count:

And that, at and during the time and times aforesaid, and at the District aforesaid, in the said Post Office Department of the said United States there existed the office of the said First Assistant Postmaster General and the said Division of Free Delivery, which are, respectively, mentioned in the said first count, and that to the said office of the said First Assistant Postmaster General and to the said Division of Free Delivery, in the said administrative arrangement of the said Department, and in accordance with the organization of the said Department and the division of business therein, were assigned
36 respectively the several duties which are in the said first count stated and set forth as assigned to the said office and the said division respectively; and that the said office of the First Assistant Postmaster General was under the charge and management of an officer who was called and known as the First Assistant Postmaster

General, and the said Division of Free Delivery was under the management and control of an officer who was called and known as the General Superintendent of the Free Delivery System, as is stated and set forth in the said first count:

And that, at and during the time and times aforesaid, and at the District aforesaid, the said August W. Machen, mentioned in the said first count of this indictment, was the General Superintendent of the Free Delivery System, as is stated and set forth in the said first count, and as such General Superintendent held the said office of General Superintendent and performed the duties thereof, and acted as such General Superintendent, in the manner and under the circumstances and obligations which are set forth and stated in the said first count; and that the said August W. Machen was charged with all and singular the duties which are stated and set forth in the said count as being the duties of him the said August W. Machen as such General Superintendent; and the said August W. Machen as such General Superintendent was then and there an officer and employee of the said United States and of the said Department, and a person acting for and on behalf of the said United States in an official function, under and by the authority of the said Post Office Department, all in the manner and under the circumstances and conditions which are stated and set forth in the said count:

And that, at and during the time and times aforesaid, at the District aforesaid, the said William G. Crawford, mentioned in the said first count, was an officer, agent and attorney of and for the said Postal Device and Lock Company, which is mentioned in the said count, the said Postal Device and Lock Company being then and there a body corporate as is stated and set forth in the said first count.

And that, on the twenty-fifth day of June in the year of our Lord one thousand nine hundred and two, and at the District aforesaid, the said Postmaster General, in the name of and on behalf of the said United States, made and entered into a certain contract with the said Postal Device and Lock Company, by the terms of which contract the said United States agreed to purchase from the said Postal Device and Lock Company, at certain prices fixed and stated in the said contract, so many of said satchels as might and should be needed by the said Department in the said postal service during the period of four years to begin on the first day of July in the year of our Lord one thousand nine hundred and two:

And that, on the twenty-seventh day of September in the year of our Lord one thousand nine hundred and two, and at the District aforesaid, all and singular the premises and several premises were well known to the said August W. Machen and to the said William G. Crawford, and to the said George E. Lorenz, who is mentioned in the first count:

37 And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That thereafter, that is to say, on the said twenty-seventh day of September in the year of our Lord one thousand nine hundred and two, and after the making of the said contract between the said United States and the said Postal Device and Lock Company, and at

the District aforesaid, the said August W. Machen, the said William G. Crawford, and the said George E. Lorenz, wickedly intending and devising to defraud the said United States, unlawfully did conspire, combine, confederate and agree together, to defraud the said United States in the dishonest manner, and through and by means of the dishonest scheme and arrangement, following, that is to say:

That the said William G. Crawford, should advise and procure the said Postal Device and Lock Company to make and enter into a certain contract with the said George E. Lorenz, by the terms of which contract certain portions and shares of the moneys to be received by the said Postal Device and Lock Company from the said United States, in payment for the said satchels to be sold by the said Postal Device and Lock Company to the said United States under and in accordance with the said contract then and there, to wit, on the day last mentioned, and at the District aforesaid, existing between the said Postal Device and Lock Company and the said United States, should be paid by the said Postal Device and Lock Company to the said George E. Lorenz, the said portions and shares so to be paid to the said George E. Lorenz being upon the principles and according to the rates following, that is to say: For each satchel sold to and paid for by the said United States of the class or kind known and designated in the said contract then existing between the said United States and the said Postal Device and Lock Company, as Class A, the sum of forty-five cents should be paid by the said Postal Device and Lock Company to the said George E. Lorenz; for each satchel sold to and paid for by the said United States of the class or kind known and designated in the said contract last mentioned as Class B, the sum of one dollar and nineteen cents should be paid by the said Postal Device and Lock Company to the said George E. Lorenz; and for each satchel, sold to and paid for by the said United States of the class or kind known and designated in the said contract last mentioned as Class C, the sum of eighty-four cents should be paid by the said Postal Device and Lock Company to the said George E. Lorenz.

And that it was, then and there, to wit, on the said twenty-seventh day of September in the year of our Lord one thousand nine hundred and two, and at the District aforesaid, further agreed by and between the said August W. Machen, the said William G. Crawford, and the said George E. Lorenz, in accordance with and as a part of the said dishonest scheme and arrangement for the defrauding of the said United States, that all of the moneys and each of the said several sums of money which in accordance with and by virtue of the said last mentioned contract, between the said Postal Device and Lock Company and the said George E. Lorenz, might and were

38 to be paid, from time to time, by the said Postal Device and Lock Company to the said George E. Lorenz, out of all the payments to be made to the said Postal Device and Lock Company by the said United States for such of the said satchels as were to be sold and furnished by the said Postal Device and Lock Company to the said United States under and in accordance with the said contract to that end then and there, on the day last named, and at

the District aforesaid, existing as aforesaid, should be divided between them, the said August W. Machen, the said William G. Crawford, and the said George E. Lorenz, in certain proportions and upon some certain basis and principle of division, as to which the grand jurors aforesaid, are not informed and cannot in this indictment make any certain averment, and upon a plan and by a method whereby the share and shares of the said moneys thus to be allotted and paid to the said August W. Machen from time to time, in accordance with the said unlawful conspiracy, combination, confederation and agreement, should be transmitted to him, the said August W. Machen, by and through the agency of the said William G. Crawford and the said George E. Lorenz, and that the said August W. Machen should, from time to time, and whenever and so often as such payments might and should be paid by the said United States on account of any of the said satchels so to be sold and furnished by the said Postal Device and Lock Company, receive and accept, from and through the said William G. Crawford and the said George E. Lorenz a certain share of all such payments, the proportion and amount of such share being to the grand jurors as aforesaid, unknown, the said August W. Machen being then and there, to wit, on the day and year last named and at the District aforesaid, an officer of the said United States and the General Superintendent of the Free Delivery System, and charged with and performing as such officer and such General Superintendent the several duties hereinbefore in this count and in the said first count of this indictment stated and set forth, and the said William G. Crawford and the said George E. Lorenz, then and there to wit, on the day and year last named and at the District aforesaid, well knowing that the said August W. Machen was such officer and such General Superintendent and charged with and performing the said duties.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That thereafter, that is to say, on the third day of October in the year of our Lord, one thousand nine hundred and two, at the District aforesaid, in pursuance of the said unlawful conspiracy, confederation, combination and agreement, and to effect the object of the same, the said William G. Crawford unlawfully did present and cause to be presented to the said Post Office Department, in the name and on account of the said Postal Device and Lock Company, a certain bill against the said United States, that is to say, a certain bill or account in and for the sum of fifteen thousand eight hundred dollars, for five thousand of the said satchels, which said satchels had been sold and delivered to the said Post Office Department at the price of three dollars and sixteen cents for each of the
39 said satchels, in accordance with and in pursuance of the said contract hereinbefore mentioned and stated to have been made and entered into by and between the said United States and the said Postal Device and Lock Company on the said twenty-fifth day of June in the year of our Lord one thousand nine hundred and two.

And that thereafter, that is to say, on the thirteenth day of October in the year of our Lord one thousand nine hundred and

two, at the District aforesaid, in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and further to effect the object of the same, the said August W. Machen, being then and there as aforesaid, the General Superintendent of the Free Delivery System, unlawfully, did write and place upon the face of the said bill or account for the sum of fifteen thousand eight hundred dollars, which is hereinbefore mentioned and stated to have been presented to the said Post Office Department by the said William G. Crawford on the said third day of October in the year of our Lord one thousand nine hundred and two, the words following, that is to say: "Approved A. W. Machen, gen'l sup't F. D. system;" and the said August W. Machen did thereby, then and there, officially and in his capacity as General Superintendent of the Free Delivery System aforesaid, approve the said bill as correct:

And that thereafter, that is to say, on the fifteenth day of October in the year of our Lord one thousand nine hundred and two, at the District aforesaid, in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and further to effect the object of the same, the said William G. Crawford unlawfully did take, receive and accept from the said Post Office Department a certain warrant for the payment of money, the said warrant being designated as Post Office Department Warrant No. 7015, and bearing date of the said fifteenth day of October in the year of our Lord one thousand nine hundred and two, and drawn upon the Treasurer of the United States and payable by the Assistant Treasurer of the United States at New York, for the payment of fifteen thousand eight hundred dollars, to the said Postal Device and Lock Company or its order, under the name and designation of Postal Device and Lock Co., the said warrant being issued in payment of the said bill or account hereinbefore mentioned and stated to have been presented to the said Post Office Department by the said William G. Crawford:

And that thereafter, that is to say, on the twenty-first day of October in the year of our Lord one thousand nine hundred and two, at the District aforesaid, in further pursuance of the said unlawful conspiracy, confederation and agreement, and to effect the object of the same, the said William G. Crawford unlawfully did write and draw a certain check, that is to say, a check of the said Postal Device and Lock Company, bearing date of the said twenty-first day of October in the year of our Lord one thousand nine hundred and two, upon Spencer Trask and Company, Bankers, of New — City, in the State of New York, for the payment of the sum of five thousand four hundred and forty-one dollars and thirty-five cents to the order of the said George E. Lorenz; and that, thereafter, that is to say, upon the day last aforesaid and at the District aforesaid, the said William G. Crawford unlawfully did send and transmit the said check to the said George E. Lorenz:

And that thereafter, that is to say, on the twenty-eighth day of October in the year of our Lord one thousand nine hundred and two, at the City of Toledo, in the State of Ohio, the said George E. Lorenz having received from the said William G. Crawford the said check

hereinbefore stated to have been drawn by the said William G. Crawford in favor of the said George E. Lorenz, and the said George E. Lorenz having caused the amount of the said check to be paid to him the said George E. Lorenz, in further pursuance of the said unlawful agreement and to effect the object of the same, unlawfully did send and transmit, by means of a certain draft then and there procured by him the said George E. Lorenz, to the said August W. Machen the sum of nine hundred dollars; against the form of the statute in such case made and provided, and against the peace and Government of the said United States.

Third Count.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That before and on the first day of April in the year of our Lord one thousand nine hundred and two, and from thence continuously until the first day of May in the year of our Lord one thousand nine hundred and three, at the District aforesaid, the letter carriers' satchels and the collectors' satchels which are mentioned in the first count of this indictment were in use in the postal service of the said United States by the said Post Office Department of the said United States and were purchased by the said United States after the publication of advertisements and the making of contracts of such character and to such purpose and effect as are stated and set forth in the said first count, and were furnished to the letter carriers employed in the said postal service, all in the manner and according to the custom, usage and course of business stated and set forth in the said first count:

And that, at and during the time and times aforesaid, and at the District aforesaid, in the said Post Office Department of the said United States there existed the office of the said First Assistant Postmaster General and the said Division of Free Delivery, which are, respectively, mentioned in the said first count, and that to the said office of the said First Assistant Postmaster General and to the said Division of Free Delivery, in the said administrative arrangement of the said Department, and in accordance with the organization of the said Department and the division of business therein, were assigned respectively the several duties which are in the said first count stated and set forth as assigned to the said office and the said division respectively; and that the said office of the First Assistant Postmaster General was under the charge and management of an officer who was called and known as the First Assistant Postmaster General, and the said Division of Free Delivery was under the management
41 and control of an officer who was called and known as the General Superintendent of the Free Delivery System, as is stated and set forth in the said first count:

And that, at and during the time and times aforesaid, and at the District aforesaid, the said August W. Machen, mentioned in the said first count of this indictment, was the General Superintendent of the Free Delivery System, as is stated and set forth in the said first count, and as such General Superintendent held the said office of

General Superintendent and performed the duties thereof, and acted as such General Superintendent, in the manner and under the circumstances and obligations which are set forth and stated in the said first count; and that the said August W. Machen was charged with all and singular the duties which are stated and set forth in the said count as being the duties of him, the said August W. Machen, as such General Superintendent; and the said August W. Machen, as such General Superintendent was then and there an officer and employee of the said United States and of the said Department, and a person acting for and on behalf of the said United States in an official function, under and by the authority of the said Post Office Department, all in the manner and under the circumstances and conditions which are stated and set forth in the said first count:

And that, at and during the time and times aforesaid, at the District aforesaid, the said William G. Crawford, mentioned in the said first count, was an officer, agent and attorney of and for the said Postal Device and Lock Company which is mentioned in the said first count, the said Postal Device and Lock Company being then and there a body corporate as is stated and set forth in the said first count.

And that during the period aforesaid, and on the sixth day of May in the year of our Lord one thousand nine hundred and two, and at the District aforesaid, the said First Assistant Postmaster General, acting upon the advice of the said August W. Machen as General Superintendent of the Free Delivery System as aforesaid, caused advertisements to be prepared and published and specifications to be prepared in the manner, of the character and to the purpose hereinbefore in the said first count of this indictment stated and set forth, by which advertisements public notice was given that the said Post Office Department desired and invited bids or proposals for the furnishing to the said Department such supplies of the said letter carriers' satchels and collectors' satchels as might and should be needed by the said Department during the period of four years to begin on the first day of July in the year of our Lord one thousand nine hundred and two; and that it was the intention and purpose of the said Department to enter into a contract with some person or persons, firm or corporation, for the purpose of procuring such supplies of the said satchels as might be required by the said Department during the said period of four years; and that, in accordance with the terms of the said advertisements aforesaid, it was the intention and purpose of the said Department to receive such bids of the character aforesaid before and until the sixth day of June in the year of our Lord one thousand nine hundred and two, and on or after the
42 said day last named to make the said contract with such bidder as might offer the bid which, by the said Department and by the proper officers of the said Department might and shou-d be found to be the most advantageous and proper for the said Department to accept, and that specifications might be obtained as in said first count set forth; all of which premises the grand jurors aforesaid, on their oath aforesaid, do charge were then and there, to wit, on the said sixth day of May, in the year of our Lord one thousand nine hundred and two, and at the District aforesaid, well known to the

said August W. Machen, the said William G. Crawford, and the said George E. Lorenz.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That on the third day of June in the year of our Lord one thousand nine hundred and two, and after the publication of the advertisements aforesaid, and at the District aforesaid, and before the expiration of the period within which bids of the character aforesaid in accordance with the said advertisement might be presented to the said Department and would be received by the said Department, and before the awarding by the said Department of any contract for the furnishing of the said satchels to the said Department for the period of four years to begin on the said first day of July in the year of our Lord one thousand nine hundred and two, the said August W. Machen, the said William G. Crawford, and one George E. Lorenz, hereinbefore mentioned, late of the City of Toledo, in the State of Ohio, all well knowing all and singular the premises hereinbefore in this count, stated and set forth, and wickedly devising and intending to cheat and defraud the said United States of its moneys, and to cause the said United States to pay more money and a higher price for the said satchels to be purchased by the said United States than the price at which the said Postal Device and Lock Company was willing to sell the said satchels, unlawfully and fraudulently did conspire, combine, confederate and agree together, and with divers other persons to the grand jurors aforesaid unknown, knowingly, willfully, wrongfully and corruptly to defraud the said United States of its moneys and to cause the said United States to pay more money and a higher price for the said satchels to be purchased by the said United States than the price at which said Postal Device and Lock Company was willing to sell the same, in the dishonest manner and through and by means of the dishonest scheme and arrangement following, that is to say:

That the said William G. Crawford should cause and procure the said Postal Device and Lock Company to offer to the said Post Office Department a bid for the furnishing to the said Department of so many of the said satchels as might and should be needed by the said Department during the said period of four years from the said first day of July next thereafter ensuing; and that the said William G. Crawford should, at the same time, cause and procure the said Postal Device and Lock Company, before the said offering of the said bid, to enter into a contract with the said George E. Lorenz, by the terms of which contract it should be agreed by and between the said
43 Postal Device and Lock Company and the said George E. Lorenz that, in the event that the said bid of the said Postal Device and Lock Company should be accepted by the said Post Office Department and the said contract for furnishing the said satchels to the said Department should be by the said Department awarded to the said Postal Device and Lock Company, then, whenever and so often as the said Postal Device and Lock Company should under such contract sell and furnish to the Department any number of such satchels and receive from the said Department pay-

ment for the same, the said Postal Device and Lock Company should allow and pay over to the said George E. Lorenz all and so much of such payment so to be made by the said Department as should remain after the said Postal Device and Lock Company should have paid for the cost of manufacturing such satchels so to be sold and delivered to the said Department and should have retained for itself the said Postal Device and Lock Company, out of such payment so to be made an additional sum equal to twenty-five cents for each of the said satchels so to be sold and furnished.

And it was, then and there, to wit, on the said third day of June in the year of our Lord one thousand nine hundred and two, at the District aforesaid, further agreed by and between the said William G. Crawford, the said August W. Machen and the said George E. Lorenz, in accordance with and as part of the said dishonest scheme and arrangement for the defrauding of the said United States, that all the moneys and each of the said several sums of money which, in accordance with and by virtue of the said contract between the said Postal Device and Lock Company and the said George E. Lorenz, might and were to be, from time to time, paid by the said Postal Device and Lock Company to the said George E. Lorenz, out of all payments made to the said Postal Device and Lock Company by the said United States for such of the said satchels as were to be sold and furnished to the said Department under and in accordance with the said contract to that end and to be made as aforesaid, should be divided between them, the said William G. Crawford, the said August W. Machen, and the said George E. Lorenz, in certain proportions and upon some certain basis and principle of division as to which the said grand jurors are not informed and cannot in this indictment make any certain averment, and upon a plan and by a method whereby the share and shares of the said moneys thus to be allotted and paid to the said August W. Machen from time to time in accordance with the said unlawful conspiracy, confederacy and agreement, should be transmitted to him, the said August W. Machen by and through the agency of the said William G. Crawford and the said George E. Lorenz, and that the said August W. Machen should, from time to time and whenever and so often as such payments might and should be paid by the said United States on account of any of the said satchels so to be sold and furnished by the said Postal Device and Lock Company, receive and accept from and through the said William G. Crawford and the said George E. Lorenz a certain share of all such payments, the proportion and amount of such share being to the grand jurors as aforesaid unknown, the said August W.

44 Machen being then and there, to wit, on the said third day of June in the year of our Lord one thousand nine hundred and two, at the District aforesaid, as aforesaid, an officer of the said United States and the General Superintendent of the Free Delivery System and charged with and performing, as such officer and as such General Superintendent, the several duties hereinbefore stated and set forth, and the said William G. Crawford and the said George E. Lorenz, then and there, to wit, on the said third day of June in the year of our Lord one thousand nine hundred and two, at the District

aforesaid, well knowing that the said August W. Machen was such officer and such General Superintendent and charged with and performing the said duties.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That thereafter, that is to say, on the twenty-fifth day of June in the year of our Lord one thousand nine hundred and two, at the District aforesaid, the said Postmaster General, in the name and on behalf of the said United States did make and enter into a certain contract with the said Postal Device and Lock Company, by the terms of which contract the said United States agreed to purchase from the said Postal Device and Lock Company, at certain prices fixed and stated in the said contract, so many of the said satchels as might and should be needed by the said Department in the said postal service during the period of four years to begin on the said first day of July in the year of our Lord one thousand nine hundred and two.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That thereafter, that is to say, on the third day of October in the year of our Lord one thousand nine hundred and two, at the District aforesaid, in pursuance of the said unlawful conspiracy, confederation, combination, and agreement hereinbefore mentioned and stated to have been formed and made by and between the said William G. Crawford, the said August W. Machen, and the said George E. Lorenz, and to effect the object of the same, the said William G. Crawford unlawfully did present, and cause to be presented to the said Post Office Department, in the name and on account of the said Postal Device and Lock Company, a certain bill against the said United States, that is to say, a certain bill or account in and for the sum of fifteen thousand eight hundred dollars, for five thousand of the said satchels, which said satchels had been sold and delivered by the said Postal Device and Lock Company to the said Post Office Department at the price of three dollars and sixteen cents for each of the said satchels, in accordance with and in pursuance of the said contract hereinbefore mentioned and stated to have been made and entered into by and between the said United States and the said Postal Device and Lock Company on the said twenty-fifth day of June in the year of our Lord one thousand nine hundred and two:

And that thereafter, that is to say, on the thirteenth day of October in the year of our Lord one thousand nine hundred and
45 two, at the District aforesaid, in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and further to effect the object of the same, the said August W. Machen, being then and there as aforesaid the General Superintendent of the Free Delivery System, unlawfully did write and place upon the face of the said bill or account, for the sum of fifteen thousand eight hundred dollars, which is hereinbefore mentioned and stated to have been presented to the said Post Office Department by the said William G. Crawford on the said third day of October in the year of our Lord one thousand nine hundred and two, the words

following, that is to say: "Approved A. W. Machen, Gen'l Supt. F. D. System;" and the said August W. Machen did thereby, then and there, officially and in his capacity as General Superintendent of the Free Delivery System aforesaid, approve the said bill as correct:

And that thereafter, that is to say, on the fifteenth day of October in the year of our Lord one thousand nine hundred and two, at the District aforesaid, in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and further to effect the object of the same, the said William G. Crawford unlawfully did take, receive and accept from the said Post Office Department a certain warrant for the payment of money, the said warrant being designated as Post Office Department Warrant No. 7015, and bearing date of the said fifteenth day of October in the year of our Lord one thousand nine hundred and two, and drawn upon the Treasurer of the United States and payable by the said Assistant Treasurer of the United States at New York, for the payment of fifteen thousand eight hundred dollars to the said Postal Device and Lock Company or its order, under the name and designation of Postal Device and Lock Co., the said warrant being issued in payment of the said bill or account hereinbefore mentioned and stated to have been presented to the said Post Office Department by the said William G. Crawford.

And that thereafter, that is to say, on the twenty-first day of October in the year of our Lord one thousand nine hundred and two, at the District aforesaid, in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said William G. Crawford unlawfully did write and draw a certain check, that is to say, a check of the said Postal Device and Lock Company, bearing date of the said twenty-first day of October in the year of our Lord one thousand nine hundred and two, upon Spencer Trask and Company, Bankers, of New York City, in the State of New York, for the payment of the sum of five thousand four hundred and forty-one dollars and thirty-five cents to the order of the said George E. Lorenz; and that thereafter, that is to say, upon the day last aforesaid and at the District aforesaid, the said William G. Crawford unlawfully did send and transmit the said check to the said George E. Lorenz:

And that thereafter, that is to say, on the twenty-eighth day of October in the year of our Lord one thousand nine hundred and two,

46 at the City of Toledo in the State of Ohio, the said George E. Lorenz having received from the said William G. Crawford the said check hereinabefore stated to have been drawn by the said William G. Crawford in favor of him the said George E. Lorenz, and the said George E. Lorenz having caused the amount of the said check to be paid to him the said George E. Lorenz, in further pursuance of the said unlawful agreement and to effect the object of the same, unlawfully did send and transmit, by means of a certain draft then and there procured by him the said George E. Lorenz, to the said August W. Machen, the sum of nine hundred dollars; against the form of the statute in such case made and provided, and agninst the peace and government of the said United States.

Fourth Count.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That before and on the first day of April in the year of our Lord one thousand nine hundred and two, and from thence continuously until the first day of May in the year of our Lord one thousand nine hundred and three, at the District aforesaid, the letter carriers' satchels and the collectors' satchels which are mentioned in the first count of this indictment were in use in the postal service of the said United States by the said Post Office Department of the said United States and were purchased by the said United States after the publication of advertisements and the making of contracts of such character and to such purpose and effect as are stated and set forth in the said first count, and were furnished to the letter carriers employed in the said postal service, all in the manner and according to the custom, usage and course of business stated and set forth in the said first count:

And that, at and during the time and times aforesaid, and at the District aforesaid, in the said Post Office Department of the said United States there existed the said office of the said First Assistant Postmaster General and the said Division of Free Delivery, which are, respectively, mentioned in the said first count, and that to the said office of the said First Assistant Postmaster General and to the said Division of Free Delivery, in the said administrative arrangement of the said Department, and in accordance with the organization of the said Department and the division of business therein, were assigned respectively the several duties which are in the said first count stated and set forth as assigned to the said office and the said division respectively; and that the said office of the First Assistant Postmaster General was under the charge and management of an officer who was called and known as the First Assistant Postmaster General, and the said Division of Free Delivery was under the management and control of an officer who was called and known as the General Superintendent of the Free Delivery System, as is stated and set forth in the said first count:

And that at and during the time and times aforesaid, and at the District aforesaid, the said August W. Machen, mentioned in the said first count of this indictment, was the General Superintendent
47 of the Free Delivery System, as is stated and set forth in the said first count, and as such General Superintendent held the said office of General Superintendent and performed the duties thereof and acted as such General Superintendent, in the manner and under the circumstances and obligations which are set forth and stated in the said first count; and that the said August W. Machen was charged with all and singular the duties which are stated and set forth in the said count as being the duties of him, the said August W. Machen, as such General Superintendent; and the said August W. Machen, as such General Superintendent was then and there an officer and employee of the said United States and of the said Department, and a person acting for and on behalf of the said United

States in an official function, under and by the authority of the said Post Office Department, all in the manner and under the circumstances and conditions which are stated and set forth in the said count:

And that at and during the time and times aforesaid, and at the District aforesaid, the said William G. Crawford, mentioned in the said first count, was an officer, agent and attorney of and for the said Postal Device and Lock Company, which is mentioned in the said count, the said Postal Device and Lock Company being then and there a body corporate as is stated and set forth in the said first count:

And that on the twenty-fifth day of June in the year of our Lord one thousand nine hundred and two, and at the District aforesaid, the said Postmaster General, in the name of and on behalf of the said United States, made and entered into a contract with the said Postal Device and Lock Company, by the terms of which contract the said United States agreed to purchase from the said Postal Device and Lock Company, at certain prices fixed and stated in the said contract, so many of the said satchels as might and should be needed by the said Department in the said postal service during the period of four years to begin on the first day of July in the year of our Lord one thousand nine hundred and two:

And that, on the twenty-seventh day of September in the year of our Lord one thousand nine hundred and two, and at the District aforesaid, all and singular the premises and several premises, as well those stated and set forth in this count as those stated and set forth in the said first count of this indictment, were well known to the said August W. Machen and to the said William G. Crawford, and to the said George E. Lorenz, who is mentioned in the said first count.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That thereafter, that is to say, on the said twenty-seventh day of September in the year of our Lord one thousand nine hundred and two, and after the making of the said contract between the said United States and the said Postal Device and Lock Company, and at the District aforesaid, the said August W. Machen, the said William G. Crawford, and the said George E. Lorenz, wickedly intending and devising to defraud the said United States of its
48 moneys and to cause the said United States to pay more money and a higher price for the satchels to be purchased by the said United States than the price at which the said Postal Device and Lock Company was willing to sell the said satchels, unlawfully did conspire, combine, confederate and agree together, to defraud the said United States of its moneys and to cause the said United States to pay more money and a higher price for the satchels to be purchased by the said United States than the price at which the said Postal Device and Lock Company was willing to sell the said satchels, in the dishonest manner and through and by means of the dishonest scheme and arrangement following, that is to say:

That the said William G. Crawford should advise and procure the said Postal Device and Lock Company to make and enter into a

certain contract with the said George E. Lorenz, by the terms of which contract certain portions and shares of the moneys to be received by the said Postal Device and Lock Company from the said United States, in payment for the said satchels to be sold by the said Postal Device and Lock Company to the said United States under and in accordance with the said contract then and there, to wit, on the day last named and at the District aforesaid, as aforesaid, existing between the said Postal Device and Lock Company and the said United States, should be paid by the said Postal Device and Lock Company to the said George E. Lorenz, the said portions and shares so to be paid to the said George E. Lorenz being upon the principles and according to the rates following, that is to say: For each satchel sold to and paid for by the said United States of the class or kind known and designated in the said contract then existing between the said United States and the said Postal Device and Lock Company, as Class A, the sum of forty-five cents should be paid by the said Postal Device and Lock Company to the said George E. Lorenz; for each satchel, sold to and paid for by the said United States, of the class or kind known and designated in the said contract last mentioned as Class B, the sum of one dollar and nineteen cents should be paid by the said Postal Device and Lock Company to the said George E. Lorenz; and each satchel, sold to and paid for by the said United States of the class or kind known and designated in the said contract last mentioned as Class C, the sum of eighty-four cents should be paid by the said Postal Device and Lock Company to the said George E. Lorenz:

And that it was, then and there, to wit, on the said twenty-seventh day of September in the year of our Lord one thousand nine hundred and two and at the District aforesaid, further agreed by and between the said August W. Machen, the said William G. Crawford, and the said George E. Lorenz, in accordance with and as a part of the said dishonest scheme and arrangement for the defrauding of the said United States, that all of the moneys and each of the said several sums of money which in accordance with and by virtue of the said last-mentioned contract, between the said Postal Device and Lock Company and the said George E. Lorenz might and were to be paid, from time to time, by the said Postal Device and Lock Company to the said Geeorge E. Lorenz, out of all the payments to be made to the said Postal Device and Lock Company by the
49 said United States for such of the said satchels as were to be sold and furnished by the said Postal Device and Lock Company to the said United States under and in accordance with the said contract to that end then and there, to wit, on the day last named, and at the District aforesaid, existing as aforesaid, should be divided between them, the said August W. Machen, the said William G. Crawford, and the said George E. Lorenz, in certain proportions and upon some certain basis and principle of division, as to which the Grand Jurors aforesaid, are not informed and cannot in this indictment make any certain averment, and upon a plan and by a method whereby the share and shares of the said moneys thus to be allotted and paid to the said August W. Machen from time to

time, in accordance with the said unlawful conspiracy, combination, confederation and agreement should be transmitted to him, the said August W. Machen by and through the agency of the said William G. Crawford and the said George E. Lorenz, and that the said August W. Machen should, from time to time, and whenever and so often as such payments might and should be paid by the said United States on account of any of the said satchels so to be sold and furnished by the said Postal Device and Lock Company, receive and accept, from and through the said William G. Crawford and the said George E. Lorenz a certain share of all such payments, the proportion and amount of such share being to the grand jurors aforesaid unknown, the said August W. Machen being then and there, to wit, on the day last named and at the District aforesaid, as aforesaid, an officer of the said United States and the General Superintendent of the Free Delivery System, and charged with and performing as such officer and such General Superintendent the several duties hereinbefore in this count and in the said first count of this indictment stated and set forth, and the said William G. Crawford and the said George E. Lorenz, then and there, to wit, on the day last named and at the District aforesaid, well knowing that the said August W. Machen was such officer and such General Superintendent and charged with and performing the said duties:

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That thereafter, that is to say, on the third day of October in the year of our Lord one thousand nine hundred and two and at the District aforesaid, in pursuance of the said unlawful conspiracy, confederation, combination and agreement, and to effect the object of the same, the said William G. Crawford unlawfully did present and cause to be presented to the said Post Office Department, in the name and on account of the said Postal Device and Lock Company, a certain bill against the said United States, that is to say, a certain bill or account in and for the sum of fifteen thousand eight hundred dollars, for five thousand of the said satchels, which said satchels had been sold and delivered by the said Postal Device and Lock Company to the said Post Office Department at the price of three dollars and sixteen cents for each of the said satchels, in accordance with and in pursuance of the said contract hereinbefore mentioned and
50 stated to have been made and entered into by and between the said United States and the said Postal Device and Lock Company on the said twenty-fifth day of June in the year of our Lord one thousand nine hundred and two.

And that thereafter, that is to say, on the thirteenth day of October in the year of our Lord one thousand nine hundred and two, and at the District aforesaid, in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and further to effect the object of the same, the said August W. Machen, being then and there as aforesaid the General Superintendant of the Free Delivery System, unlawfully did write and place upon the face of the said bill or account for the sum of fifteen thousand eight hundred dollars, which is hereinbefore mentioned and stated to have been pre-

sented to the said Post Office Department by the said William G. Crawford on the said third day of October in the year of our Lord one thousand nine hundred and two, the words following, that is to say, "Approved A. W. Machen genl. supt. F. D. system"; and the said August W. Machen did thereby, then and there, officially and in his capacity as General Superintendent of the Free Delivery System aforesaid, approve the said bill as correct.

And that thereafter, that is to say, on the fifteenth day of October in the year of our Lord one thousand nine hundred and two, at the District aforesaid, in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and further to effect the object of the same, the said William G. Crawford unlawfully did take, receive and accept from the said Post Office Department a certain warrant for the payment of money, the said warrant being designated as Post Office Department Warrant No. 7015, and bearing date of the said fifteenth day of October in the year of our Lord one thousand nine hundred and two, and drawn upon the Treasurer of the United States and payable by the said Assistant Treasurer of the United States at New York, for the payment of fifteen thousand eight hundred dollars to the said Postal Device and Lock Company or its order, under the name and designation of Postal Device and Lock Co., the said warrant being issued in payment of the said bill or account hereinbefore mentioned and stated to have been presented to the said Post Office Department by the said William G. Crawford:

And that thereafter, that is to say, on the twenty-first day of October in the year of our Lord one thousand nine hundred and two and at the District aforesaid, in further pursuance of the said unlawful conspiracy, combination, confederation and argeement, and to effect the object of the same, the said William G. Crawford unlawfully did write and draw a certain check, that is to say, a check of the said Postal Device and Lock Company, bearing date of the said twenty-first day of October in the year of our Lord one thousand nine hundred and two, upon Spencer Trask and Company, Bankers of New York City, in the State of New York, for the payment of the sum of five thousand four hundred and forty-one dollars and thirty-five cents to the order of the said George E. Lorenz; and that thereafter, that is to say, upon the day last aforesaid and at the

51 District aforesaid, the said William G. Crawford unlawfully did send and transmit the said check to the said George E. Lorenz:

And that thereafter, that is to say, on the twenty-eighth day of October in the year of our Lord one thousand nine hundred and two, at the City of Toledo, in the State of Ohio, the said George E. Lorenz having received from the said William G. Crawford the said check hereinbefore stated to have been drawn by the said William G. Crawford in favor of the said George E. Lorenz, and the said George E. Lorenz having caused the amount of the said check to be paid to him the said George E. Lorenz, in further pursuance of the said unlawful agreement and to effect the object of the same, unlawfully did send and transmit, by means of a certain draft then and there procured by him, the said George E. Lorenz, to the said August W. Machen, the

sum of nine hundred dollars; against the form of the statute in such case made and provided, and against the peace and government of the said United States:

Fifth Count.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That before and on the first day of April in the year of our Lord one thousand nine hundred and two, and from thence continuously until the first day of May in the year of our Lord one thousand nine hundred and three, at the District aforesaid, the letter carriers' satchels and the collectors' satchels which are mentioned in the first count of this indictment were in use in the postal service of the said United States by the said Post Office Department of the said United States and were purchased by the said United States after the publication of advertisements and the making of contracts of such character and to such purpose and effect as are stated and set forth in the said first count, and were furnished to the letter carriers employed in the said postal service, all in the manner and according to the custom, usage and course of business stated and set forth in the said first count:

And that, at and during the time and times aforesaid, and at the District aforesaid, in the said Post Office Department of the said United States there existed the office of the said First Assistant Postmaster General and the said Division of Free Delivery, which are, respectively, mentioned in the said first count, and that to the said office of the said First Assistant Postmaster General and to the said Division of Free Delivery, in the said administrative arrangement of the said Department, and in accordance with the organization of the said Department and the division of business therein, were assigned respectively the several duties which are in the said first count stated and set forth as assigned to the said office and the said division respectively; and that the said office of the First Assistant Postmaster General was under the charge and management of an officer who was called and known as the First Assistant Postmaster General, and the said Division of Free Delivery was under the management and
52 control of an officer who was called and known as the General Superintendent of the Free Delivery System, as is stated and set forth in the said first count:

And that, at and during the time and times aforesaid, and at the District aforesaid, the said August W. Machen, mentioned in the said first count of this indictment, was the General Superintendent of the Free Delivery System, as is stated and set forth in the said first count, and as such General Superintendent held the said office of General Superintendent and performed the duties thereof, and acted as such General Superintendent, in the manner and under the circumstances and obligations which are set forth and stated in the said first count; and that the said August W. Machen was charged with all and singular the duties of which are stated and set forth in the said count as being the duties of him the said August W. Machen as such General Superintendent; and the said August W. Machen, as such General

Superintendent, was then and there an officer and employee of the said United States and of the said Department, and a person acting for and on behalf of the said United States in an official function, under and by the authority of the said Post Office Department, all in the manner and under the circumstances and conditions which are stated and set forth in the said first count:

And that, at and during the time and times aforesaid, at the District aforesaid, the said William G. Crawford, mentioned in the said first count, was an officer, agent and attorney of and for the said Postal Device and Lock Company, which is mentioned in the said count, the said Postal Device and Lock Company being then and there a body corporate as is stated and set forth in the said first count.

And that, during the period aforesaid, and on the second day of May, in the year of our Lord one thousand nine hundred and two, and at the District aforesaid, it became and was the duty of the said First Assistant Postmaster General and of the said Postmaster General, in accordance with the requirements of the law then and there in force, and in the due, regular, and customary course of business in the said Post Office Department, to cause specifications and advertisements to be prepared and published in the manner and of the character and to the purpose hereinbefore, in the first count of this indictment, stated and set forth, by which advertisements public notice should be and was to be given that the said Post Office Department desired and invited proposals or bids for the furnishing to the said Department of such supplies of the said letter carriers' satchels and collectors' satchels as might and should be required by the said Department during the period of four years to begin on the first day of July, in the year of our Lord one thousand nine hundred and two; and that it was the intention and purpose of the said Department to make and enter into a contract with some person or persons, firm or corporation, for the purpose of procuring for the said Department such supplies of such satchels as might and should be required by the said Department during the said period of four years to begin on the said first day of July next thereafter ensuing; and that it was the intention and purpose of the said Department to receive such bids of
53 the character aforesaid before and until some day certain to be fixed and named in and by the said advertisements so to be published as aforesaid, and after such day certain to make such contract with such bidder or bidders as might and should offer the bid which, by the said Department and by the proper officers of the said Department, might and should be found and deemed to be the most advantageous and proper for the said Department to accept:

And that, on the said second day of May in the year of our Lord one thousand nine hundred and two, and at the District aforesaid, in accordance with the premises, and in the due, regular and customary course of business in the said Department, the specifications and advertisements aforesaid, of the character hereinbefore stated and set forth were about to be prepared and published, and the said contract, for the furnishing to the said Department of such supplies of the said satchels as might and should be required by the said Department during the said period of four years to begin on the said first day of

July next thereafter ensuing, was about to be made, that is to say, that the said advertisements were, in accordance with the said premises, to be published soon after the said second day of May in the year of our Lord one thousand nine hundred and two, and the said contract was to be made on or before the said first day of July in the year of our Lord one thousand nine hundred and two:

And that all and singular the premises stated in this count, were then and there, that is to say, on the said second day of May in the year of our Lord one thousand nine hundred and two and at the District aforesaid, well known to the said William G. Crawford, and the said August W. Machen and the said George E. Lorenz.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That on the said second day of May in the year of our Lord one thousand nine hundred and two, and at the District aforesaid, and before the preparation and publication of the said specifications and advertisements which were, as aforesaid, then, on the day last aforesaid, about to be prepared and published, and before the expiration of the period within which bids of the character aforesaid, in accordance with the said advertisements about to be published as aforesaid, might be presented to the said Department, and before the awarding and making by the said Department of any contract for the furnishing to the said Department of the said satchels to the said Department during the period of four years to begin on the said first day of July in the year of our Lord one thousand nine hundred and two, the said August W. Machen, the said Wililam G. Crawford, and one George E. Lorenz, hereinbefore in the first count of this indictment and in this count mentioned, late of the City of Toledo in the State of Ohio, all well knowing all and singular the premises hereinbefore, in this count stated and set forth, and acting in contemplation of and with reference to the said duty of the said Postmaster General and the said First Assistant Postmaster General to publish the advertisements and to make the contract hereinbefore men[illegible]ned and stated, and acting in contemplation of and with reference to the said advertisements so to be published and the contract so to be made as aforesaid, and wickedly devising and intending to cheat and defraud the said United States, unlawfully and fraudulently did
54 conspire, combine, confederate and agree together, and with divers other persons to the grand jurors aforesaid unknown, knowingly, wrongfully and corruptly to defraud the said United States in the dishonest manner and through and by means of the dishonest scheme and arrangement following, that is to say:

That the said William G. Crawford should cause and procure the said Postal Device and Lock Company to offer to the said Post Office Department a bid for the furnishing to the said Department of so many of the said satchels as might and should be needed by the said Department during the said period of four years from the said first day of July next thereafter ensuing; that the said August W. Machen, acting as such General Superintendent of the Free Delivery System as aforesaid, and exercising the said powers vested in him as such General Superintendent as aforesaid, and using

the confidence reposed in him by the said First Assistant Postmaster General and the said Postmaster General as aforesaid, should, so far as in him the said August W. Machen, the power lay, by and through advice to be given and recommendation to be made in that behalf to the said First Asisstant Postmaster General and the said Postmaster General by him, the said August W. Machen as such General Superintendent, procure and be instrumental in procuring the said bid, so as aforesaid to be offered by the said Postal Device and Lock Company to the said Post Office Department for furnishing to the said Department the said satchels to be required by the said Department during the said period of four years to begin on the said first day of July next thereafter ensuing, to be accepted by the said Department; and should in like manner as such General Superintendent, procure and be instrumental in procuring the award by the said Post-Office Department to the said Postal Device and Lock Company of the said contract, then, to wit, on the date last named, intended to be awarded and made by the said Department for the purchase of the said satchels to be required by the said Department during the said period of four years to begin on the said first day of July next thereafter ensuing; and should, in the event that the said contract should be awarded to and made with the said Postal Device and Lock Company, in like manner as such General Superintendent procure and be instrumental in procuring the purchase by the said Post Office Department of large numbers of said satchels; and should, in the event that the said contract should be awarded to and made with the said Postal Device and Lock Company, in like manner, as such General Superintendent, procure and be instrumental in procuring the approval and payment of such bills as the said Postal Device and Lock Company might and should render to the said Post Office Department for such of the said satchels as might and should be sold and delivered by the Postal Device and Lock Company to the said Department in pursuance of the said contract; and that the said William G. Crawford should cause and procure the said Postal Device and Lock Company, to agree with the said George E. Lorenz, to pay him, the said George E. Lorenz, whenever and so often as the said Postal Device and Lock Company, should under such contract with the United States, so procured as
55 aforesaid, sell and furnish to the Department any number of such satchels and receive from the said Department payment for the same, a certain share of such payment and payments so to be made by the said United States to the said Postal Device and Lock Company:

And it was then and there, to wit, on the said second day of May in the year of our Lord one thousand nine hundred and two, and at the District aforesaid, further agreed by and between the said William G. Crawford, the said August W. Machen and the said George E. Lorenz, in accordance with and as a part of the said dishonest scheme and arrangement for the defrauding of the said United States, that all the moneys and each of the said several sums of money which, in accordance with and by virtue of the said agreement between the said Postal Device and Lock Company and the said

George E. Lorenz, might and were to be from time to time, paid by the said Postal Device and Lock Company to the said George E. Lorenz, out of all payments made to the said Postal Device and Lock Company by the said United States for such of the said satchels as were to be sold and furnished to the said Department under and in accordance with the said contract to that end to be made as aforesaid, should be divided between them, the said William G. Crawford, the said August W. Machen, and the said George E. Lorenz, in certain proportions and upon some certain basis and principle of division as to which the said Grand Jurors are not informed and cannot in this indictment make any certain averment, and upon a plan and by a method whereby the share and shares of the said moneys thus to be allotted and paid to the said August W. Machen from time to time in accordance with the said unlawful conspiracy, confederacy and agreement, should be transmitted to him, the said August W. Machen by and through the agency of the said William G. Crawford and the said George E. Lorenz, and that the said August W. Machen should, from time to time, and whenever and so often as such payments might and should be paid by the said United States on account of any of the said satchels so to be sold and furnished by the said Postal Device and Lock Company, receive and accept from and through the said William G. Crawford and the said George E. Lorenz a certain share of all such payments, the proportion and amount of such share being to the said grand jurors as aforesaid unknown, the said August W. Machen being then and there, to wit, on the said second day of May in the year of our Lord one thousand nine hundred and two, at the District aforesaid, as aforesaid, an officer of the said United States and the General Superintendent of the Free Delivery System and charged with and performing as such officer and as such General Superintendent, the several duties hereinbefore stated and set forth, and the said William G. Crawford and the said George E. Lorenz, then and there, to wit, on the said second day of May in the year of our Lord one thousand nine hundred and two, at the District aforesaid, well knowing that the said August W. Machen was such officer and such General Superintendent and charged with and performing the said duties.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

56 That thereafter, that is to say, on the twenty-fifth day of June in the year of our Lord one thousand nine hundred and two, at the District aforesaid, the said Postmaster General, in the name and on behalf of the said United States, did make and enter into a certain contract with the said Postal Device and Lock Company, by the terms of which contract the said United States agreed to purchase from the said Postal Device and Lock Company at certain prices fixed and stated in the said contract, so many of the said satchels as might and should be needed by the said Department in the said postal service during the period of four years to begin on the said first day of July in the year of our Lord one thousand nine hundred and two.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That thereafter, that is to say, on the sixth day of June in the year of our Lord one thousand nine hundred and two, and at the District aforesaid, in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and further to effect the object of the same, the said August W. Machen, being then and there, to wit, on the day and at the place, last aforesaid the General Superintendent of the Free Delivery System, and acting as such General Superintendent, unlawfully did write and place the letters A W M upon the face of a certain proposed order bearing date as of the day last aforesaid, which proposed order was prepared and intended to be signed by the Postmaster General and would, upon being so signed become and be an effective order by the terms and effect of which certain persons therein named would be appointed and constituted a committee to receive and open such bids as had been received by the said Department for the furnishing to the said Department of such supplies of the said satchels as should be required by the said Department during the period of four years to begin on the said first day of July in the year of our Lord one thousand nine hundred and two, and by the said terms of which order it would further be directed that the said persons, so as aforesaid to be appointed and constituted such committee, should report to the said Postmaster General such findings as they, the said persons, should make in respect of the said bids; and the said August W. Machen did thereby, then and there, on the said sixth day of June in the year of our Lord one thousand nine hundred and two, and at the District aforesaid, officially and in his capacity as General Superintendent of the Free Delivery System aforesaid, approve the said proposed order and recommend to the said Postmaster General that he, the said Postmaster General, should sign the same.

And that thereafter, that is to say, on the third day of October in the year of our Lord one thousand nine hundred and two, at the District aforesaid, in pursuance of the said unlawful conspiracy, confederation, combination and agreement hereinbefore mentioned and stated to have been formed and made by and between the said William G. Crawford, the said August W. Machen and the said George E. Lorenz, and to effect the object of the same, the said William G. Crawford unlawfully did present, and cause to be
57 presented to the said Post Office Department, in the name and on account of the said Postal Device and Lock Company, a certain bill against said United States, that is to say, a certain bill or account in and for the sum of fifteen thousand eight hundred dollars, for five thousand of the said satchels, which said satchels had been sold and delivered by the said Postal Device and Lock Company to the said Post Office Department at the price of three dollars and sixteen cents for each of the said satchels, in accordance with and in pursuance of the said contract hereinbefore mentioned and stated to have been made and entered into by and between the said United States and the Postal Device and Lock Company on the said twenty-

fifth day of June in the year of our Lord one thousand nine hundred and two:

And that thereafter, that is to say, on the thirteenth day of October in the year of our Lord one thousand nine hundred and two, at the District aforesaid, in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and further to effect the object of the same, the said August W. Machen, being then and there as aforesaid, the General Superintendent of the Free Delivery System, unlawfully did write and place upon the face of the said bill or account, for the sum of fifteen thousand eight hundred dollars, which is hereinbefore mentioned and stated to have been presented to the said Post Office Department by the said William G. Crawford on the said third day of October in the year of our Lord one thousand nine hundred and two, the words following, that is to say: "Approved A. W. Machen, gen'l supt. F. D. system;" and the said August W. Machen did thereby, then and there, officially and in his capacity as General Superintendent of the Free Delivery System aforesaid, approve the said bill as correct:

And that thereafter, that is to say, on the fifteenth day of October in the year of our Lord one thousand nine hundred and two, at the District aforesaid, in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and further to effect the object of the same, the said William G. Crawford unlawfully did take, receive and accept from the said Post Office Department a certain warrant for the payment of money, the said warrant being designated as Post Office Department Warrant No. 7015, and bearing the date of the said fifteenth day of October in the year of our Lord one thousand nine hundred and two, and drawn upon the Treasurer of the United States and payable by the said Assistant Treasurer of the United States at New York, for the payment of fifteen thousand eight hundred dollars to the said Postal Device and Lock Company or its order, under the name and designation of Postal Device and Lock Co., the said warrant being issued in payment of the said bill or account hereinbefore mentioned and stated to have been presented to the Post Office Department by the said William G. Crawford.

And that thereafter, that is to say, on the twenty-first day of October in the year of our Lord one thousand nine hundred and two, at the District aforesaid, in further pursuance of the said un-
58 lawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said William G. Crawford unlawfully did write and draw a certain check, that is to say, a check of the said Postal Device and Lock Company, bearing date of the said twenty-first day of October in the year of our Lord one thousand nine hundred and two, upon Spencer Trask and Company, Bankers, of New York city, in the State of New York, for the payment of the sum of five thousand four hundred and forty-one dollars and thirty-five cents to the order of the said George E. Lorenz; and that thereafter, that is to say, upon the day last aforesaid and at the District aforesaid, the said William G. Crawford un-

lawfully did send and transmit the said check to the said George E. Lorenz.

And that thereafter, that is to say, on the twenty-eighth day of October in the year of our Lord one thousand nine hundred and two, at the City of Toledo, in the State of Ohio, the said George E. Lorenz having received from the said William G. Crawford the said check hereinbefore stated to have been drawn by the said William G. Crawford in favor of him, the said George E. Lorenz, and the said George E. Lorenz having caused the amount of the said check to be paid to him, the said George E. Lorenz, in further pursuance of the said unlawful agreement and to effect the object of the same, unlawfully did send and transmit by means of a certain draft then and there procured by him the said George E. Lorenz, to the said August W. Machen the sum of nine hundred dollars; against the form of the statute in such case made and provided and against the peace and Government of the said United States.

Sixth Count.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That before and on the first day of April in the year of our Lord one thousand nine hundred and two, and from thence continuously until the first day of May in the year of our Lord one thousand nine hundred and three, at the District aforesaid, the letter carriers' satchels and the collectors' satchels which are mentioned in the first count of this indictment were in use in the postal service of the said United States by the said Post Office Department of the said United States and were purchased by the said United States after the publication of advertisements and the making of contracts of such character and to such purpose and effect as are stated and set forth in the said first count, and were furnished to the letter carriers employed in the said postal service, all in the manner and according to the custom, usage and course of business stated and set forth in the said first count:

And that, at and during the time and times aforesaid, and at the District aforesaid, in the said Post Office Department of the said United States there existed the office of the said First Assistant Postmaster General and the said Division of Free Delivery, which are, respectively, mentioned in the said first count, and that to the said office of the said First Assistant Postmaster General and
59 to the said Division of Free Delivery, in the said administrative arrangement of the said Department, and in accordance with the organization of the said Department and the division of business therein, were assigned respectively the several duties which are in the said first count stated and set forth as assigned to the said office and the said division respectively; and that the said office of the First Assistant Postmaster General was under the charge and management of an officer who was called and known as the First Assistant Postmaster General, and the said Division of Free Delivery was under the management and control of an officer who was called

and known as the General Superintendent of the Free Delivery System, as is stated and set forth in the said first count:

And that, at and during the time and times aforesaid, and at the District aforesaid, the said August W. Machen, mentioned in the said first count of this indictment, was the General Superintendent of the Free Delivery System, as is stated and set forth in the said first count, and as such General Superintendent held the said office of General Superintendent and performed the duties thereof, and acted as such General Superintendent, in the manner and under the circumstances and obligations which are set forth and stated in the said first count; and that the said August W. Machen was charged with all and singular the duties which are stated and set forth in the said count as being the duties of him the said August W. Machen as such General Superintendent; and the said August W. Machen, as such General Superintendent, was then and there an officer and employee of the said United States and of the said Department, and a person acting for and on behalf of the said United States in an official function, under and by the authority of the said Post Office Department, all in the manner and under the circumstances and conditions which are stated and set forth in the said first count:

And that, at and during the time and times aforesaid, at the District aforesaid, the said William G. Crawford, mentioned in the said first count, was an officer, agent and attorney of and for the said Postal Device and Lock Company, which is mentioned in the said count, the said Postal Device and Lock Company being then and there a body corporate as is stated and set forth in the said first count.

And that, during the period aforesaid, and on the second day of May in the year of our Lord one thousand nine hundred and two, and at the District aforesaid, it became and was the duty of the said First Assistant Postmaster General and of the said Postmaster General, in accordance with the requirements of the law then and there in force, and in the due, regular, and customary course of business in the said Post Office Department, to cause specifications and advertisements to be prepared and published in the manner and of the character and to the purpose hereinbefore, in the first count of this indictment, stated and set forth, by which advertisements public notice should be and was to be given that the said Post Office Department desired and invited proposals or bids for the
60 furnishing to the said Department of such supplies of the said letter carriers' satchels and collectors' satchels as might and should be required by the said Department during the period of four years to begin on the first day of July in the year of our Lord one thousand nine hundred and two; and that it was the intention and purpose of the said Department to make and enter into a contract with some person or persons, firm or corporation, for the purpose of procuring for the said Department such supplies of such satchels as might and should be required by the said Department during the said period of four years to begin on the said first day of July next thereafter ensuing; and that it was the intention and

purpose of the said Department to receive such bids of the character aforesaid before and until some day certain to be fixed and named in and by the said advertisements so to be published as aforesaid, and after such day certain to make such contract with such bidder or bidders as might and should offer the bid which, by the said Department and by the proper officers of the said Department, might and should be found and deemed to be most advantageous and proper for the said Department to accept:

And that, on the said second day of May in the year of our Lord one thousand nine hundred and two, and at the District aforesaid, in accordance with the premises and in the due, regular and customary course of business in the said Department, the specifications and advertisements aforesaid of the character hereinbefore stated and set forth were about to be prepared and published, and the said contract for the furnishing to the said Department of such supplies of the said satchels as might and should be required by the said Department during the said period of four years to begin on the said first day of July next thereafter ensuing, was about to be made, that is to say, that the said advertisements were, in accordance with the said premises, to be published soon after the said second day of May in the year of our Lord one thousand nine hundred and two, and the said contract was to be made on or before the said first day of July in the year of our Lord one thousand nine hundred and two:

And that all and singular the premises stated in this count were then and there, that is to say, on the said second day of May in the year of our Lord one thousand nine hundred and two, and at the District aforesaid, well known to the said William G. Crawford, and the said August W. Machen, and the said George E. Lorenz.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That on the said second day of May in the year of our Lord one thousand nine hundred and two, and at the District aforesaid, and before the preparation and publication of the said specifications and advertisements which were, as aforesaid, then, on the day last aforesaid, about to be prepared and published, and before the expiration of the period within which bids of the character aforesaid, in accordance with the said advertisements about to be published as aforesaid, might be presented to the said Department, and before the awarding and making by the said Department of any contract for
the furnishing to the said Department of the said satchels to
61 the said Department during the period of four years to begin
on the said first day of July in the year of our Lord one thousand nine hundred and two, the said August W. Machen, the said William G. Crawford, and one George E. Lorenz, hereinbefore in the first count of this indictment and in this count mentioned, late of the City of Toledo in the State of Ohio, all well knowing all and singular the premises hereinbefore in this count stated and set forth, and acting in contemplation of and with reference to the said duty of the said Postmaster General and the said First Assistant Postmaster General to publish the advertisements and to make the con-

tract hereinbefore mentioned and stated, and acting in contemplation of and with reference to the said advertisements so to be published and the contract so to be made as aforesaid, unlawfully and fraudulently did conspire, combine, confederate and agree together and with divers others persons to the Grand Jurors aforesaid unknown, in the manner and to the effect and purposes following, that is to say:

That the said William G. Crawford should cause and procure the said Postal Device and Lock Company to offer to the said Post Office Department a bid for the furnishing to the said Department of so many of said satchels as might and should be needed by the said Department during the said period of four years from the said first day of July next thereafter ensuing; and that the said William G. Crawford should, at the same time cause and procure the said Postal Device and Lock Company, before the said offering of the said bid, to enter into a contract with the said George E. Lorenz, by the terms of which contract it should be agreed by and between the said Postal Device and Lock Company and the said George E. Lorenz that, in the event that the said bid of the said Postal Device and Lock Company should be accepted by the said Post Office Department and the said contract for furnishing the said satchels to the said Department should be by the said Department awarded to the said Postal Device and Lock Company, then, whenever and so often as the said Postal Device and Lock Company should under such contract sell and furnish to the Department any number of such satchels and receive from the said Department payment for the same, the said Postal Device and Lock Company should allow and pay over to the said George E. Lorenz all and so much of such payment so to be made by the said Department as should remain after the said Postal Device and Lock Company should have paid for the cost of manufacturing such satchels so to be sold and delivered to the said Department and should have retained for itself, the said Postal Device and Lock Company, out of such payment so to be made an additional sum equal to twenty-five cents for each of the said satchels so to be sold and furnished.

And it was, then and there, to wit, on the said second day of May in the year of our Lord one thousand nine hundred and two, at the District aforesaid, further agreed by and between the said William G. Crawford, the said August W. Machen, and the said George E. Lorenz, in accordance with and as a part of the said dishonest scheme and arrangement to defraud the said United States, that the said August W. Machen, acting as such General Superintendent
62 of the Free Delivery System as aforesaid, and exercising the said powers vested in him as such General Superintendent as aforesaid, and using the confidence reposed in him by the said First Assistant Postmaster General and the said Postmaster General as aforesaid, should, so far as in him, the said August W. Machen, the power lay, by and through advice to be given and recommendation to be made in that behalf to the said First Assistant Postmaster General and the said Postmaster General by him, the said August W. Machen as such General Superintendent, procure and be instrumental in procuring the said bid, so as aforesaid to be offered by the said

Postal Device and Lock Company to the said Post Office Department for furnishing to the said Department the said satchels to be required by the said Department during the said period of four years to begin on the said first day of July next thereafter ensuing, to be accepted by the said Department; and should in like manner, as such General Superintendent, procure and be instrumental in procuring the award by the said Post Office Department to the said Postal Device and Lock Company of the said contract, then, to wit, on the date last named, intended to be awarded and made by the said Department for the purchase of the said satchels to be required by *of* said Department during the said period of four years to begin on the said first day of July next thereafter ensuing; and should, in the event that the said contract should be awarded to and made with the said Postal Device and Lock Company, in like manner as such General Superintendent procure and be instrumental in procuring the purchase by the said Post Office Department of large numbers of the said satchels; and should, in the event that the said contract should be awarded to and made with the said Postal Device and Lock Company, in like manner, as such General Superintendent, procure and be instrumental in procuring the approval and payment of such bills as the said Postal Device and Lock Company might and should render to the said Post Office Department for such of the said satchels as might and should be sold and delivered by the said Postal Device and Lock Company to the said Department in pursuance of the said contract.

And it was, then and there, to wit, on the said second day of May in the year of our Lord one thousand nine hundred and two, and at the District aforesaid, further agreed by and between the said William G. Crawford, the said August W. Machen and the said George E. Lorenz, in accordance with and as a part of the said dishonest scheme and arrangement for the defrauding of the said United States that all the moneys and each of the said several sums of money which in accordance with and by virtue of the said contract between the said Postal Device and Lock Company and the said George E. Lorenz, might and were to be from time to time, paid by the said Postal Device and Lock Company to the said George E. Lorenz, out of all payments made to the said Postal Device and Lock Company by the said United States for such of the said satchels as were to be sold and furnished to the said Department under and in accordance with the said contract to that end to be made as
63 aforesaid, should be divided between them the said William G. Crawford, the said August W. Machen and the said George E. Lorenz, in certain proportions and upon some certain basis and principle of division as to which the said Grand Jurors are not informed and cannot in this indictment make any certain averment, and upon a plan and by a method whereby the share and shares of the said moneys thus to be allotted and paid to the said August W. Machen from time to time in accordance with the said unlawful conspiracy, confederacy and agreement, should be transmitted to him, the said August W. Machen by and through the agency of the said William G. Crawford and the said George E. Lorenz, and that the said August W. Machen should, from time to time, and whenever

and so often as such payments might and should be paid by the said United States on account of any of the said satchels so to be sold and furnished by the said Postal Device and Lock Company, receive and accept from and through the said William G. Crawford and the said George E. Lorenz a certain share of all such payments, the proportion and amount of such share being to the said Grand Jurors as aforesaid unknown, the said August W. Machen being then and there, to wit, on the said second day of May in the year of our Lord one thousand nine hundred and two, at the District aforesaid, as aforesaid, an officer of the said United States and the General Superintendent of the Free Delivery System and charged with and performing, as such officer and as such General Superintendent, the several duties hereinbefore stated and set forth, and the said William G. Crawford and the said George E. Lorenz then and there, to wit on the said second day of May in the year of our Lord one thousand nine hundred and two, at the District aforesaid, well knowing that the said August W. Machen as such officer and such General Superintendent was charged with and performing the said duties.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That on the said second day of May in the year of our Lord one thousand nine hundred and two, and at the District aforesaid, and at the time of the forming and making of the said unlawful and fraudulent conspiracy, combination, confederation and agreement so as aforesaid formed and made by and between the said William G. Crawford, the said August W. Machen and the said George E. Lorenz, and in accordance with and as a part of the said unlawful and fraudulent conspiracy, combination, confederation and agreement the said William G. Crawford and the said George E. Lorenz unlawfully did promise, offer and agree to and with the said August W. Machen that, in the event that the said Post Office Department should accept the said bid then, to wit, on the day last named, intended and agreed, as aforesaid, to be offered by the said Postal Device and Lock Company, and should award to the said Postal Device and Lock Company the said contract for the furnishing to the said Department of the said supplies of the said satchels to be required by the said Department during the said period to begin on the said first day of July next thereafter ensuing, then they, the said William G. Crawford and the said George E. Lorenz, would transmit

64 and give to the said August W. Machen a certain share as aforesaid of all moneys to be paid by the said United States to the said Postal Device and Lock Company in payment for and on account of the satchels so to be furnished by the said Postal Device and Lock Company, the said promise, offer and agreement being so made by the said William G. Crawford and the said George E. Lorenz with intent to influence the decision and action of the said August W. Machen, whenever and so often as he, the said August W. Machen, as General Superintendent of the Free Delivery System, might and should decide and act in respect of the acceptance of the said bid, so as aforesaid agreed and arranged to be offered by the said Postal Device and Lock Company, and in respect of the awarding by the said United States of the said contract for the furnishing

of the said satchels, and in respect of the purchases of such satchels so as aforesaid to be made by the said United States in pursuance of such contract so to be awarded, and in respect of the approval and allowance of the bills so to be presented by the said Postal Device and Lock Company for the payment by the said United States for such satchels to be purchased by the said United States, all of which matters and things were then, to wit on the said second day of May in the year of our Lord one thousand nine hundred and two, by law to be brought before him, the said August W. Machen, for his decision and action in his official capacity as such General Superintendent; and with intent to influence the said August W. Machen to commit, and to aid them, the said William G. Crawford and the said George E. Lorenz, in committing frauds upon the said United States in respect of the aforesaid matters and things last mentioned, and to make opportunity for the commission by them, the said William G. Crawford and the said George E. Lorenz, of frauds upon the said United States in respect to the said matters and things last mentioned; and with intent to induce him, the said August W. Machen, to accept the said moneys, so as aforesaid to be paid by them, the said William G. Crawford and the said George E. Lorenz, to him, the said August W. Machen, in violation of the official duty of him, the said August W. Machen; the said August W. Machen, being as aforesaid then and there, to wit on the day last named and at the District aforesaid, an officer of the said United States and a person acting for and on behalf of the said United States in an official function, under and by virtue of the said Post Office Department.

And that, on the said second day of May in the year of our Lord one thousand nine hundred and two, and at the District aforesaid, and at the time of the forming and making of the said unlawful and fraudulent conspiracy, combination, confederation and agreement, so as aforesaid formed and made by and between the said William G. Crawford, the said August W. Machen, and the said George E. Lorenz, and in accordance with and as a part of the said unlawful and fraudulent conspiracy, combination, confederation and agreement, the said August W. Machen, being as aforesaid then and there, towit on the day last named and at the District aforesaid, an officer of the said United States and a person acting
65 for and on behalf of the said United States, in an official capacity, under and by virtue of the authority of the said Post Office Department, unlawfully and fraudulently did agree with the said William G. Crawford and the said George E. Lorenz that he, the said August W. Machen, would receive and accept the said certain share of all moneys to be paid by the said United States to the said Postal Device and Lock Company in payment for and on account of all purchases of the said satchels to be made by the said United States from the said Postal Device and Lock Company, which said share of such moneys is hereinbefore mentioned and stated to have been promised and agreed to be paid by the said William G. Crawford and the said George E. Lorenz to him, the said August W. Machen, with the intent on the part of him, the said August W. Machen, to have his decision and action influenced by the said

moneys whenever and so often as he, the said August W. Machen, might and should decide and act in respect of the acceptance of the said bid, so as aforesaid agreed and arranged to be offered by the said Postal Device and Lock Company, and in respect of the awarding by the said United States of the said contract for the furnishing of the said satchels, and in respect of the purchases of such satchels so as aforesaid to be made by the said United States in pursuance of the said contract so to be awarded, and in respect of the approval and allowance of the bills so to be presented by the said Postal Device and Lock Company for the payment by the said United States for such satchels to be purchased by the said United States, all of which matters and things were then, to wit on the said second day of May in the year of our Lord one thousand nine hundred and two, by law to be brought before him, the said August W. Machen, for his decision and action in his official capacity as such General Superintendent of the Free Delivery System.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That thereafter, that is to say, on the twenty-fifth day of June in the year of our Lord one thousand nine hundred and two, at the District aforesaid, the said Postmaster General, in the name and on behalf of the said United States, did make and enter into a certain contract with the said Postal Device and Lock Company, by the terms of which contract the said United States agreed to purchase from the said Postal Device and Lock Company, at certain prices fixed and stated in the said contract, so many of the said satchels as might and should be needed by the said Department in the said postal service during the period of four years to begin on the said first day of July in the year of our Lord one thousand nine hundred and two.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That thereafter, that is to say, on the sixth day of June in the year of our Lord one thousand nine hundred and two, and at the District aforesaid, in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and further to effect the object of the same, the said August W. Machen, being then
66 and there, to wit on the day and at the place last aforesaid the General Superintendent of the Free Delivery System, and acting as such General Superintendent, unlawfully did write and place the letters A W M upon the face of a certain proposed order bearing date as of the day last aforesaid, which proposed order was prepared and intended to be signed by the Postmaster General and would, upon being so signed, become and be an effective order by the terms and effect of which certain persons therein named would be appointed and constituted a committee to receive and open such bids as had been received by the said Department for the furnishing to the said Department of such supplies of the said satchels as should be required by the said Department during the period of four years to begin on the said first day of July in the year of our Lord one thousand nine hundred and two, and by the said terms of which

order it would further be directed that the said persons, so as aforesaid to be appointed and constituted such committee, should report to the said Postmaster General such findings as they, the said persons, should make in respect of the said bids; and the said August W. Machen did thereby, then and there, officially and in his capacity as General Superintendent of the Free Delivery System aforesaid, approve the said proposed order and recommend to the said Postmaster General that he, the said Postmaster General, should sign the same.

And that thereafter, that is to say, on the third day of October in the year of our Lord one thousand nine hundred and two, at the District aforesaid, in pursuance of the said unlawful conspiracy, confederation, combination and agreement hereinbefore mentioned and stated to have been formed and made by and between the said William G. Crawford, the said August W. Machen, and the said George E. Lorenz, and to effect the object of the same, the said William G. Crawford did unlawfully present and cause to be presented to the said Post Office Department, in the name and on account of the said Postal Device and Lock Company a certain bill against the said United States, that is to say, a certain bill or account in and for the sum of fifteen thousand eight hundred dollars, for five thousand of the said satchels, which said satchels had been sold and delivered by the said Postal Device and Lock Company to the said Post Office Department at the price of three dollars and sixteen cents for each of the said satchels, in accordance with and in pursuance of the said contract hereinbefore mentioned and stated to have been made and entered into by and between the said Unitd States and the Postal Device and Lock Company on the said twenty-fifth day of June in the year of our Lord one thousand nine hundred and two:

And that thereafter, that is to say; on the thirteenth day of October in the year of our Lord one thousand nine hundred and two, at the District aforesaid, in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and further to effect the object of the same, the said August W. Machen, being then and there as aforesaid the General Superintendent of the Free Delivery System, unlawfully did write and place upon the
67 face of the said bill or account, for the sum of fifteen thousand eight hundred dollars, which is hereinbefore mentioned and stated to have been presented to the said Post Office Department by the said William G. Crawford on the said third day of October, in the year of our Lord one thousand nine hundred and two, the words following, that is to say:

"Approved A. W. Machen, Genl. Supt. F. D. System"; and the said August W. Machen did thereby, then and there, officially and in his capacity as General Superintendent of the free Delivery System aforesaid, approve the said bill as correct:

And that thereafter, that is to say, on the fifteenth day of October in the year of our Lord one thousand nine hundred and two, at the District aforesaid, in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and further to effect the object of the same, the said William G. Crawford unlaw-

fully did take, receive and accept from the said Post Office Department a certain warrant for the payment of money, the said warrant being designated as Post Office Department Warrant No. 7015, and bearing date of the said fifteenth day of October in the year of our Lord one thousand nine hundred and two, and drawn upon the Treasurer of the United States and payable by the said Assistant Treasurer of the United States at New York, for the payment of fifteen thousand eight hundred dollars to the said Postal Device and Lock Company or its order, under the name and designation of Postal Device and Lock Co., the said warrant being issued in payment of the said bill or account hereinbefore mentioned and stated to have been presented to the said Post Office Department by the said William G. Crawford.

And that thereafter, that is to say, on the twenty-first day of October in the year of our Lord one thousand nine hundred and two, at the District aforesaid, in further pursuance of the said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, the said William G. Crawford unlawfully did write and draw a certain check, that is to say, a check of the said Postal Device and Lock Company, bearing date of the said twenty-first day of October in the year of our Lord one thousand nine hundred and two, upon Spencer Trask and Company, Bankers, of New York City, in the State of New York, for the payment of the sum of five thousand four hundred and forty-one dollars and thirty-five cents to the order of the said George E. Lorenz; and that, thereafter, that is to say, upon the day last aforesaid and at the District aforesaid, the said William G. Crawford unlawfully did send and transmit the said check to the said George E. Lorenz.

And that thereafter, that is to say, on the twenty-eight- day of October in the year of our Lord one thousand nine hundred and two, at the City of Toledo in the State of Ohio, the said George E. Lorenz having received from the said William G. Crawford the said check hereinbefore stated to have been drawn by the said William G. Crawford in favor of him, the said George E. Lorenz, and the said George E. Lorenz having caused the amount of the said check to be paid to
68 him, the said George E. Lorenz, in further pursuance of the said unlawful agreement and to effect the object of the same, unlawfully did send and transmit, by means of a certain draft then and there procured by him the said George E. Lorenz, to the said August W. Machen the sum of nine hundred dollars; against the form of the statute in such case made and provided, and against the peace and government of the said United States.

MORGAN H. BEACH,
Attorney of the United States in and for the District of Columbia.

(Endorsed:) No. 24,688 United States *vs.* August W. Machen, George E. Lorenz, and William G. Crawford. Violation of Section 5440 R. S. U. S. as amended. Witnesses: Walter S. Mayer, George Robertson, R. J. Wynne, William E. Colt, H. L. Halstead, S. B. Carr, Henry Humphry, Harry W. Hadley, James J. Burke. A true bill, Geo. S. Cooper Foreman.

Demurrer.

Filed April 29, 1905.

In the Supreme Court of the District of Columbia, Holding a Criminal Term.

No. 24688, Criminal Docket.

UNITED STATES
vs.
AUGUST W. MACHEN, GEORGE E. LORENZ, and WILLIAM G. CRAWFORD.

Now comes the defendant, William G. Crawford, and says that the indictment in this case, and each count thereof, is bad in substance.

JOHN G. CARLISLE,
A. S. WORTHINGTON,
Attorneys for Defendant, William G. Crawford.

Among the matters of law intended to be argued in support of the foregoing demurrer are the following:

1. Said indictment does not set forth any offense under section 5440 of the Revised Statutes of the United States, as amended, nor does any count thereof.

2. Said indictment does not set forth any offense under any statute, or the common law, nor does any count thereof.

3. As to the first count:

(*a.*) While in said count it is attempted to charge a conspiracy to defraud the United States, it does not appear how the Government could have been defrauded by the alleged scheme or conspiracy.

69 (*b.*) While it is averred that the defendant, Machen, was to receive a part of the proceeds of the contract referred to, it is not averred directly or indirectly that this was intended to influence the official action of said defendant.

(*c.*) It is not averred that by the contract referred to in the indictment the Government was to pay more than it would have had to pay if the alleged agreement between the defendants had not been entered into.

(*d.*) It is not averred that the contract was not honestly awarded.

4. As to the second count:

The same objections as to the first count also—

(*e*) This count shows that the contract was entered into and the rights of all parties thereto fixed before the date of the alleged conspiracy, so that no possible loss could have resulted to the United States.

5. As to the third count:

The same objections as to the first count, except (*d*); and also—

(*e.*) While it is charged in this count that the conspiracy was to

cause the United States to pay more for the satchels than the price at which the Postal Device and Lock Company were willing to sell the same, there is nothing in the scheme of the alleged conspiracy as set out in this count to indicate how that result could possibly have been accomplished. It is not averred that the Postal Device and Lock Company was willing to sell at any other price than that fixed by the contract.

6. As to the fourth count:

The same objections as to the first count, also—

(*e.*) In this count it appears that the contract was complete before the alleged conspiracy was entered into so that no possible loss could have resulted to the United States.

7. As to the fifth count:

The same objections as to the first count.

8. As to the sixth count.

(*a.*) This count is bad for duplicity, because it attempts to charge a conspiracy at common law, a conspiracy in violation of section 5440 of the Revised Statutes of the United States, and the offense of bribery—the latter consisting of an alleged corruption of the defendant, Machen, by the defendants, Lorenz and Crawford.

(*b.*) It is assumed (pages 59 and 60 of the printed demurrer) that the conspiracy charged is one to defraud the United States; whereas the conspiracy charged (page 58) covers no such charge.

(*c.*) While it is charged that the defendant, Machen, was to assist in procuring the award of the contract, and in having purchases thereunder made and bills paid, it is not charged that he was to do this otherwise than in good faith, and for the best interests of the United States, nor does this count contain any equivalent charge.

(*d.*) While it is charged that the defendant, Machen, was to receive part of the money to be paid by the United States under the contract, it is not averred directly or indirectly that this was
70 to be done to corrupt him or to influence him in any way in the performance of his official duties.

(*e.*) While this count shows that the contract was awarded and that the rights of all parties were fixed by the contract, it is not charged that the contract was awarded through any influence exercised by the defendant, Machen, or any of the other defendants, or that it had any relation to the alleged agreement between the defendants.

JOHN G. CARLISLE,
A. S. WORTHINGTON,
Attorneys for Defendant, William G. Crawford.

Supreme Court of the District of Columbia.

FRIDAY, *May* 12, 1905.

The Court resumes its Session pursuant to adjournment, Mr. Justice Wright presiding.

* * * * * * *

No. 24688.

Indicted for Violation Section 5440, R. S. U. S.

UNITED STATES
vs.
WILLIAM G. CRAWFORD.

Come as well the Attorney of the United States as the defendant by his Attorney A. S. Worthington, Esq.; and, thereupon, the defendant's demurrer to the said indictment having been heretofore argued and submitted to the Court, it is considered by the Court that as to Counts Nos. 2, 3 and 4 of said indictment that said demurrer be and it hereby is sustained and that as to Counts Nos. 1, 5 and 6 that said demurrer be and it hereby is overruled and the defendant is ordered to appear before this Court to plead to Counts Nos. 1, 5 and 6 of said indictment.

Motion for Severance.

Filed in Open Court May 18, 1905. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia, Holding a Criminal Term.

No. 24688.

THE UNITED STATES, Plaintiff,
vs.
AUGUST W. MACHEN, GEORGE E. LORENZ, and WILLIAM G. CRAWFORD, Defendants.

Now comes the defendant, William G. Crawford, and moves the court to grant him a severance in this case in order that he
71 may be tried alone, and in support of the motion he submits the following statement under oath:

(1). His co-defendants, Machen and Lorenz, (and two other persons who were indicted with them) have been recently convicted of an offense similar to that charged in the indictment in this case. The other three defendants in that case are now serving a term of imprisonment in the penitentiary under said conviction. For some reason unknown to this defendant said Lorenz is still at large.

(2). Counsel for this defendant have this day asked the United States District Attorney, who is prosecuting this case, to inform

them whether said Lorenz is acting with the Government in the case and have been informed in reply by Mr. Keigwin, one of the assistants of the District Attorney, that the District Attorney's office will give this defendant's counsel no information on the subject.

(3). The petitioner is advised and avers that if tried with his co-defendants any admissions or statements in the nature of admissions made by either of them will be admissible evidence against the defendant making such admissions and that while the jury will be instructed to disregard such admissions as evidence against this defendant it will be difficult, if not impossible, for the jury to comply with such instruction. This defendant on account of the refusal of the District Attorney's office to give information as above stated and for other reasons believes and therefore avers that said Lorenz has entered into some arrangement directly or indirectly with representatives of the Government so that if he should be jointly tried with this defendant the trial as to him will be conducted pursuant to such arrangement, and that statements or admissions made by him to save himself, and not under oath may be put in evidence so as to seriously embarrass and affect this defendant, and yet this defendant's counsel will have no opportunity for cross-examination.

(4). There are two other indictments now pending in this court against the defendant. In one of them (No. 23,865) he is indicted with said Machen and said Lorenz and Martha J. Lorenz, the wife of said Lorenz. In the other (No. 23,866) he is indicted alone. Both said indictments relate in large part to the same matters which are covered by this indictment and the evidence in all three cases so far as this defendant is concerned will be largely the same whether it be evidence in support of the charge or evidence against it. This defendant wishes to have all the cases against him tried at one time by having the indictments consolidated so far as he is concerned. He is advised and avers that this can not be done if he is tried with his co-defendants, because they are not parties to one of the indictments against him. This defendant is possessed of very limited means and will be utterly unable to bear the expense of properly defending himself in such a series of trials.

WM. G. CRAWFORD.

Subscribed and sworn to this 15th day of May, 1905.
[SEAL.] HARRY H. HOLLANDER,
Notary Public, D. C.

72 To Honorable Morgan H. Beach, United States District Attorney:

Please take notice that I shall call up the foregoing motion on Thursday morning, May 18th, 1905, at the opening of the Court, (Mr. Justice Wright presiding,) or as soon thereafter as counsel can be heard.

A. S. WORTHINGTON,
Attorney for Defendant, William G. Crawford.

Service of copy of foregoing motion and notice acknowledged this 15th day of May, 1905. MORGAN H. BEACH,
U. S. Att'y, D. C.

J. C. A.

Affidavit in Support of Motion.

Filed in Open Court May 20, 1905. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia, Holding a Criminal Court.

No. 24688, Crim. Doc.

UNITED STATES
vs.
AUGUST W. MACHEN ET AL.

I, William G. Crawford, one of the defendants in the above entitled case on oath say that I am informed by my attorney, Mr. A. S. Worthington, and aver the fact to be that on Friday, May 19th, 1905, in open court, during the discussion of the motion made by my counsel for a severance in this case, Mr. Keigwin, one of the counsel present representing the Government in this case, was asked by my counsel whether he expected to offer in evidence at the trial as against the defendant Crawford statements or admissions made by the defendant Lorenz since his recent conviction, and that said Keigwin declined to answer the question.

On the like information I further aver that later in the same day and after said Keigwin had shown to my said counsel the statement which he, said Keigwin proposed to file in the case this day in answer to the affidavit upon which my counsel have asked for a severance, my said counsel again asked Mr. Keigwin whether among the statements or admissions of said Lorenz referred to in said statements were included any statements or admissions made by said Lorenz since his conviction and said Keigwin again declined to answer the question.

WM. G. CRAWFORD.

Subscribed and sworn to before me this 20th day of May, 1905.

WM. L. BROWNING,
Notary Public, D. C.

73 *Affidavit of Charles A. Keigwin, Assistant United States Attorney, on Motion for Severance.*

Filed in Open Court May 20, 1905. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia.

Criminal. No. 24688.

THE UNITED STATES
vs.
AUGUST W. MACHEN ET AL.

Charles A. Keigwin, being first duly sworn deposes and on oath says:

That he is an Assistant United States District Attorney, and as such is employed in the prosecution of the above entitled cause, and is the person mentioned in the motion for severance filed by the defendant William G. Crawford in the said cause.

That on May 15, 1905, Mr. Worthington, counsel for the said defendant, addressel to affiant several questions relative to the prosecution of the said cause, which questions the affiant, after consultation with and by authority of the United States District Attorney, answered. Among such questions was one to this effect, as noted by affiant upon a memorandum made at the time, "What is the attitude of the Government toward Lorenz?" To this affiant answered, "The same as toward any other defendant." Thereupon Mr. Worthington asked whether he was to understand by that answer that the Government had had no negotiations with the said Lorenz. To which affiant answered that he could give no information upon that point. Mr. Worthington then asked if affiant's inablity to give such information was due to the fact that no such negotiations had been had. Affiant answered, that even if such negotiations had been had, he would not feel at liberty to state that fact.

Affiant had no knowledge or information of any arrangement between the Government and the said Lorenz by virtue of which the said Lorenz is to testify for the prosecution in this cause, or according to which the conduct of the trial is to be in any way influenced. Affiant is advised by other counsel in the case that no such agreement had been made, and had prepared the case for the prosecution upon the assumption that no assistance is to be expected from any one of the defendants.

It is true that the Government is in possession of divers statements and admissions made by the several defendants, which are expected to be used against the said defendants severally and respectively, in the manner apprehended by the said defendant Crawford. Counsel for the Government do not understand that any arrangement with any of the defendants is necessary for this purpose, and affiant
74 is not aware that any such unnecessary arrangement with Lorenz or any one else had been made or is contemplated to be made.

C. A. KEIGWIN.

Subscribed and sworn to before me this 20" day of May, 1905.

J. R. YOUNG, *Cl'k,*
By F. E. CUNNINGHAM, *Ass't Cl'k.*

Supreme Court of the District of Columbia.

TUESDAY, *May* 23*d,* 1905.

The Court resumes its Session pursuant to adjournment, Mr. Justice Wright presiding.

* * * * * * *

No. 24688.

Indicted for Violation Section 5440, R. S. U. S.

UNITED STATES
vs.
AUGUST W. MACHEN.

Come as well the Attorney of the United States as the defendant in proper person in custody of the U. S. Marshal under the bench warrant issued for the arrest of said defendant in this case and by his Attorneys Messrs. Douglass and Douglass and C. H. Syme; whereupon the U. S. Attorney moves the Court to grant said defendant a severance, which motion is granted; and, thereupon, the defendant being arraigned upon the indictment (the reading of which was waived by consent of the defendant) he pleads thereto guilty and submits himself to the mercy of the Court; whereupon it is demanded of the defendant what further he has to say why the sentence of the law should not be pronounced against him; and he says nothing except as he has already said; and, thereupon, it is considered by the Court that for his said offence the said defendant be imprisoned with labor in the Penitentiary (as designated by the Attorney General of the United States) for the period of two (2) years, to take effect from and including the date of expiration of sentence pronounced upon said defendant in Criminal Case No. 23,810 of this Court, which he, said defendant is now serving in the West Virginia Penitentiary at Moundsville, W. Va., and it is ordered that said defendant be and he is remanded to the custody of the Warden of the said West Virginia Penitentiary.

Memorandum.

May 23d, 1905.—Defendant pleads not guilty to counts Nos. 1, 5 and 6 of Indictment No. 24,688.

75 Supreme Court of the District of Columbia.

THURSDAY, *June* 22, 1905.

The Court resumes its Session pursuant to recess, Mr. Justice Wright presiding.

* * * * * * *

No. 24688.

Indicted for Violation Section 5440, R. S. U. S.

UNITED STATES
vs.
WILLIAM G. CRAWFORD.

Come again the parties aforesaid in manner as aforesaid and the jury that retired on Tuesday last to consider of their verdict, who being asked if they have agreed upon a verdict, upon their oath say, that they are unable to agree upon a verdict and the Court does so find; whereupon they are discharged from further consideration of this case and the case is passed.

Memoranda.

For order consolidating cause No. 24,688 with causes Nos. 23,865 and 23,866 see page 12 of this record.

For Verdict, &c., under Indictment No. 24,688, see page 14 of this record.

For sentence, appeal to Court of Appeals, waiver of Citation, penalty of Appeal Bond, &c., see page 17 of this record.

December 30, 1905.—October Term, extended thirty-eight (38) days in which to settle Bill of Exceptions.

January 5, 1906.—Appeal Bond filed.

January 31, 1906.—Bill of Exceptions submitted to Court.

Memorandum.

February 10th, 1906.—Time to file transcript of record in Court of Appeals extended to April 6th, 1906.

March 26th.—Time to file transcript of record in Court of Appeals extended to May 7th, 1906.

Bill of Exceptions Made Part of Record.

Supreme Court of the District of Columbia.

TUESDAY, *May* 1, 1906.

The Court resumes its session pursuant to adjournment, Mr. Justice Gould presiding.

* * * * * * *

76 The following order was passed by Mr. Justice Wright:

No. 24688.

Convicted of — Section 5440, R. S. U. S.

UNITED STATES
vs.
WILLIAM G. CRAWFORD.

Now comes here the defendant by A. S. Worthington, his Attorney, and prays the Court to sign, seal and make a part of the record his bill of exceptions taken during the trial of this case and submitted to the Court on the 31st day of January, 1906, which is accordingly done *nunc pro tunc*.

Bill of Exceptions.

Filed May 1, 1906.

In the Supreme Court of the District of Columbia, Holding a Criminal Term.

No. 23866.

THE UNITED STATES
v.
WILLIAM G. CRAWFORD.

No. 23865.

THE UNITED STATES
v.
AUGUST W. MACHEN, GEORGE E. LORENZ, WILLIAM G. CRAWFORD and MARTHA J. LORENZ.

No. 24688.

THE UNITED STATES
v.
AUGUST W. MACHEN, GEORGE E. LORENZ and WILLIAM G. CRAWFORD.

At the trial of these consolidated cases Holmes Conrad, Esq., Daniel W. Baker, Esq., Stuart McNamara, Esq., appeared as counsel

for the United States, and A. S. Worthington, Esq., for the defendant, William G. Crawford.

In the selection of a jury to sit at the trial of these cases Robert I. Williams was called as a juror, and being sworn on his *voir dire,*
77 testified that he is a cabinet maker with a place of business in Washington; that he does not know the defendant, Crawford, and had no opinion in reference to the merits of the case about to be tried. On cross-examination by counsel for the defendant, said Williams testified that he was not and had not recently been in the employ of the Government of the District of Columbia, that he has no business relations of any kind with the Government of the United States or any *other* officer thereof "except in the way of the man I work for. He does work for the Government, makes cases for the Government; but not connected with it in a direct way;" that his employer is Richard Bankman, whose place of business is the same place in Washington and who has done work over at the Capitol for the Ways and Means Committee; that he has not had any work to do except—except in the Capitol; that he, Williams, had recently been employed on such work by his employer and expects to be employed that way until he (Williams) finishes the job, the contract; that he is paid by his employer.

Q. Does your having steady work to do depend in any wise upon his getting work from the government?"

A. "No; not entirely;" his employer does other work for other people; that if his employer should not have any of this work from the Government in the future it would not affect his, Williams', compensation in getting regular work for his employer has other work too; that his employer employs only two bench hands and then has three other men that help around.

Thereupon counsel for the defendant challenged said Williams on the ground that his subsistence depended practically in part upon the Government and is likely to in the future.

Thereupon the Court asked said Williams if his deliberations would be at all affected by the fact of his employer's relations with the Government; and upon said Williams replying, "I think not," the Court overruled the challenge.

To which ruling of the Court counsel for the defendant duly excepted.

Thereupon counsel for the defendant challenged said Williams peremptorily.

Thereupon John C. Haley was called as a juror in the case, and being sworn upon his *voir dire,* testified that he was a druggist; that he does not know the defendant; that he has formed no opinion about the case. He further testified in answer to questions by the District Attorney that his drug store is a sub-postal station and that he is the clerk in charge; that he is technically a clerk of the City Post Office and that he is paid an annual compensation which includes all clerk hire and rental of the premises; that it is pay for the entire service of taking charge of the station, and whatever rent may be necessary and is $300 per annum; that it is one of the things in connection with the drug business that can hardly be avoided; that a drug store to

keep up its prestige in the neighborhood must sell postage stamps and may as well get paid for it as to do it for nothing.

Thereupon counsel for the defendant challenged said Haley for cause, the objection to him being that he is a "salaried officer of the Government"; but the Court overruled the challenge.

78 To which ruling of the Court counsel for the defendant duly excepted.

On further examination by counsel for the defendant said Haley stated that the Government pays him an annual compensation of $300 which includes all clerk hire and rental of the premises.

In the further organization of the jury Edgar L Barclay, having been called as a juror and sworn on his *voir dire*, testified that he is a salesman residing in Washington, that he is in the commission business, and also in the extermination of rats busines, the ferret business and that he had neither formed nor expressed an opinion as to the guilt or innocence of the defendant. That he is not employed in any way by the Government, or by the District of Columbia.

On examination by counsel for the defendant said Barclay testified that at different times he had been employed by the Government in clearing rats out of the Departments; that he has not been so employed for three or four months; that he is very often employed from time to time by the Government to clean rats out of the Departments; that he is the only person in the District employed in that way, except that he employs his son to aid him in the business; that for these services he is paid by the disbursing officer of each Department of the Government for which he does work, and that he has no other business relations with the Government of any kind.

Thereupon counsel for the defendant challenged said Barclay on the ground that his relations with the Government made him an incompetent juror in the case. But the Court overruled the challenge.

To which ruling counsel for the defendant duly excepted.

On further examination by counsel for the defendant said Barclay said that most undoubtedly he felt he could take his seat as a juror in this case in which the Government of the United States is one party, and hear and determine it in fairness to the defendant without regard to his relations to the Government; that he hardly thought he would allow himself to be influenced in any degree by the fact that he had and expected to have business relations with the Government; that he was not quite clear about that; that he would render a verdict as fair as he possibly could; that he would give a verdict according to the evidence; that he could not be influenced either one way or the other. Being then asked by counsel for the defendant what he meant by saying that he was not quite clear that he would not be influenced by his business relations with the Government, the juror said, "Well, I will say I would not be influenced"; that he was deaf, and had misunderstood the question about being "quite clear", when it was first put to him.

During the organization of the jury the defendant exhausted the ten peremptory challenges allowed him by law, and said Haley and said Barclay sat as members of the jury that tried the case.

After the jury had been organized and duly sworn, and counsel for the Government made the opening statement to the jury, the counsel for the defendant made the opening statement on behalf of the defendant, and in said opening statement he said:

79 "The Government has promised to prove that when Lorenz received the money which came to him under the contracts with the Postal Device & Lock Company, he paid over parts of it to Machen. We, of course, have no means of refuting that, if it is refutable, and I am in no doubt, upon information which I have obtained, that the government will show you that as Lorenz received drafts from the Postal Device & Lock Company giving him his share of the proceeds of the contracts, he did make payments to Machen. And I think that you will find, when you come to decide this case, no matter what count of what indictment you have submitted to you, that it will all boil down to the single proposition: Has the Government satisfied you beyond a reasonable doubt by the evidence in the case that Mr. Crawford when he had these remittances made to Lorenz from the Company knew that Lorenz was to pay or was paying a part of the money to Machen? If he did, you would find it impossible not to say that he was in collusion with Lorenz and Machen about the matter. If he did not, and no matter what else you may find established by the evidence in this case, there will be no chance for conviction, as I understand the case, upon any count of any one of these indictments."

Thereupon counsel for the United States gave evidence to the jury, tending to prove:

That before and on April 1st, 1902, and thence continuously to the time of the trial there were and had been in use in the postal service of the United States great numbers of certain bags and satchels for the reception and carriage of mail matter by the letter carriers in the postal service of the United States, some of which bags or satchels were and are called letters carriers' satchels, and some of which were and are called collectors' satchels, all of which satchels were and are purchased by the United States through the proper officers of the Post Office Department for the United States, and were and are furnished by said Department to the said letter carriers for use by them in the delivery and collection of mail; that in the administrative arrangement of the business of the said Post Office Department during the time and times aforesaid, and at the District of Columbia, there was in said Department an office designated and known as the office of the First Assistant Postmaster General, which office was in charge and under the management of an officer of the United States called the First Assistant Postmaster General, to which office were assigned, among other duties, the general supervision and control of the Post Offices of the United States and the purchase of supplies therefor including such satchels; and that in said office there was a Division designated as the Division of Free Delivery, which division was under the management and control of an officer and employee of said Department who was known as the General Superintendent of the Free Delivery System.

That August W. Machen was such General Superintendent of the free delivery system from May 6, 1893 continuously till the 27th day

of May, 1903, and that during that period said August W. Machen was actually engaged in the performance of the duties of that office.

That during the time aforesaid it was the duty and custom
80 of said First Assistant Postmaster General, in accordance with the provisions of law then in force, at stated times to cause advertisements to be prepared for publication and to be published in divers newspapers and by other means of publication, giving public notice that the Post Office Department invited bids or proposals for furnishing to it the aforesaid satchels, in accordance with specifications which would be referred to in the advertisement and which were obtainable on application to the Post Office Department, and which specifications were prepared in the Free Delivery Division aforesaid under the supervision and approval of the General Superintendent of the free delivery system afor-said; that when bids or proposals were received in reply to such advertisements, the same would be referred to a committee appointed by the Postmaster General on the advice and recommendation of the General Superintendent of the free delivery system, to be opened, examined and considered by such committee; that the report of the committee would be submitted to the First Assistant Postmaster General, and that it was the duty of the General Superintendent of the free delivery system under the law and practice aforesaid to advise and make recommendations to the First Assistant Postmaster General in respect to the action to be had on such bids and proposals, and the report of the committee thereon; and that it was the duty of the First Assistant Postmaster General to advise the Postmaster General in regard to final action in the matter that after such final action by the Postmaster General, a contract would be made by him on behalf of the United States with the person, firm, or corporation whose bid should be accepted, by which contract the United States would agree to purchase of such person, firm or corporation for a period of four years from the time fixed by such contract, so many of such satchels as might be needed by the Department at the price and on the conditions fixed by the contract; and that after the making of such contract it was the duty and custom of the General Superintendent of the free delivery system from time to time as and when in his judgment it became and was necessary in the interest of the postal service to procure for use in said service any of said satchels, to advise and recommend the purchase thereof to the First Assistant Postmaster General; and that whenever any purchases of such satchels had been made and bills had been rendered to the Department therefor, it was the duty and custom of the General Superintendent of the free delivery system to examine such bills and to approve such of the same as he found to be correct, just and proper to be paid, and to report such approval to the First Assistant Postmaster, with a recommendation that the bills approved should be paid.

That while said August W. Machen was General Superintendent of the free delivery system, as aforesaid, it was his duty under the laws, regulations and practice then in force in said Department to advise the First Assistant Postmaster General in regard to the preparation and publication of such advertisements and the preparation of such specifications, and in respect of the awarding of contracts

for the purchase of such satchels and in respect of the purchase from time to time of satchels and of the payment of bills therefor;

81 That the defendant, William G. Crawford, held the position of Deputy Auditor of the Treasury Department for the Post Office Department from the 12th day of June, 1893, until the 22nd day of May, 1897.

That on May 5th, 1902, the Postmaster General directed that an advertisement dated May 3rd, 1902, inviting proposals for furnishing letter carriers' satchels and collectors' satchels, should be published once a week for three successive weeks in fifteen different newspapers throughout the United States, and that such an advertisement was published accordingly.

That on June 6th, 1902, the following order was made by the Postmaster General:

2700-H OFFICE OF THE POSTMASTER GENERAL,
WASHINGTON, D. C., *June* 6, 1902.

Ordered: No. 606.

That J. D. King, Chairman of Central Board of Examiners; Emanuel Speich, Clerk in Rural Free Delivery Service; and James E. Bell, Superintendent of City Delivery, Washington Postoffice, be and the same hereby are appointed a committee to receive and open bids at 12 o'clock noon, today for letter carriers' satchels submitted in response to advertisement of May 3rd, and to report their findings to me.

H. C. PAYNE,
Postmaster General.

AWM
RJW.

That on June 6th, 1902 a number of sealed bids, made in response to said advertisement, were opened by the committee appointed by said order of June 6th, 1902, and among said bids was one by the Postal Device and Lock Company, a copy of which is hereto appended, marked Exhibit A and made a part hereof.

That on the 17th day of June, 1902, said committee made a report recommending that the contract for carriers' satchels for four years from June 30th, 1902, should be awarded to the Postal Device and Lock Company in accordance with its bids. A copy of the report of said committee is hereto appended and marked Exhibit B and made part hereof.

That on the 25th day of June 1902, a contract in writing was entered into between the United States and the Postal Device and Lock Company, by which said company was required to furnish carriers' satchels of Class A and Class B, and collectors' satchels of Class C, for four years, beginning July 1st, 1902, and was to be paid therefor, $2.19 for each satchel of Class A, $3.16 for each satchel of Class B, and $3.15 for each satchel of Class C, said satchels to be

furnished in accordance with the specifications referred to in the contract.

An abstract of said contract is hereto appended, marked Exhibit C, and made a part hereof.

82 By the specifications referred to in said contract and made a part thereof, the contractor was not required to furnish shoulder straps with satchels of Class B, but was required to furnish them with satchels of Class A and Class C.

Said specifications also contain this paragraph: "Proposals to furnish satchels of other materials than those specified in these specifications will be considered if it is shown that the materials are better adapted for satchels used in the Free Delivery service."

Thereupon counsel for the United States offered in evidence the following contract between the Postal Device and Lock Company, by Wade Chance, President and George E. Lorenz, the signatures to which were admitted to be genuine by counsel for the Government and by counsel for the defendant, and which is hereafter referred to as the first Lorenz contract:

"This agreement entered into this 3rd day of June, A. D. 1902, by and between the Postal Device and Lock Company, a corporation organized under and by virtue of the laws of the State of New Jersey, and having one of its offices at #11 Broadway, (Borough of Manhattan,) in the city and state of New York, party of the first part, and George E. Lorenz, of Toledo, county of Lucas, and State of Ohio, party of the second part, witnesseth:

"The party of the first part has agreed and does hereby agree to employ the party of the second part, as hereinafter provided, the compensation of the said party of the second part for services rendered under and by virtue of this agreement, from and after the date of its execution up to and including the 30th day of June, 1902, to be one (1) dollar, the receipt of which is hereby acknowledged. If and in the event that the object of this employment, as hereinafter states at length to wit., the award to said party of the first part of a certain contract for the manufacture of letter carriers' mail bags or satchels, its attained, then the said party of the second part shall be further compensated for his services rendered under this agreement and contract as hereinafter provided.

"The said party of the second part agrees to give to the said party of the first part all his best effort and services toward securing the award to the said party of the first part of a certain contract with the Post Office Department of the United States Government for the manufacture of letter Carriers' mail bags or satchels, the advertisement for bids for said contract being hereto attached and marked "Ex. A."

"The parties hereto, said party of the first part acting by and through its vice president, William G. Crawford, of Washington, D. C., shall jointly determine on bids to be made to said Post Office Department of the United States Government with a view to securing the award to the said party of the first part of said contract for the manufacture of said letter carriers' mail bags or satchels, and if said contract is awarded to said party of the first part, the said party

of the second part and said Crawford, acting for the said party of the first part, shall jointly enter into agreements and contracts with manufacturers for the manufacture of said letter carriers' mail bags or satchels and for the materials necessarily required in the
83 manufacture of said bags or satchels; provided that the bid or bids submitted for the purpose of securing the award of said contract for the manufacture of said letter carriers' mail bags or satchels shall be presented or submitted to the Post office authorities in the name of said party of the first part and all contracts made with any manufacturers or other persons for the manufacture of said letter carriers' mail bags or satchels shall be entered into in the name of said party of the first part.

"The said party of the second part agrees that he will not make any bid or bids on or pertaining to the said contract for the manufacture of said letter carriers' mail bags or satchels other than the bid or bids mutually agreed to by the parties hereto, as hereinbefore provided, which said bid or bids shall be presented or submitted in the name of the said party of the first part; and said party of the second part further agrees that he will not participate save as herein provided in any bid or bids having for its or their object the securing of said contract for the manufacture of said letter carriers' mail bags or satchels, either directly or indirectly; and the said party of the second part also agrees not to furnish any figures to or aid or assist any person or persons, other than the said party of the first part, either directly or indirectly, to secure the award of said contract for the manufacture of said letter carriers' mail bags or satchels.

"If and in the event that said contract is awarded by the Post Office authorities of the United States Government to said party of the first part under and by virtue of bid or bids mutually agreed to and presented by the parties to this agreement, then the parties hereto shall be entitled to the net profits of or arising from the said contract in the shares following, to wit, the party of the first part shall be entitled to a profit of twenty-five (25) cents on each and every said letter carriers' bag or satchel furnished to the said Post Office Department of the United States Government under said contract, and said profit of twenty-five (25) cents on each and every said bag or satchel shall become the sole property of the said party of the first part, while all the remainder of said profit shall become the sole property of the said party of the second part, said excesses or surplus of said net profit over and above said twenty-five (25) cents on each said mail bag or satchel furnished the said Post Office Department of the United States Government being full compensation to the said party of the second part for all services rendered or to be rendered by him in the premises up to and including the date when said contract with the United States Government is terminated. If and in the event that the said net profit on said bags or satchels does not amount to more than twenty-five (25) cents on each and every of said bags or satchels furnished to the said Post Office Department of the United States Government, then the entire net profit growing out of said contract for the manufacture of said letter carriers' mail bags or satchels shall become the sole property of

the said party of the first part, it being understood and agreed that the term "net profit," where used in this agreement, shall mean the difference between the cost of manufacture and delivery; (including necessary materials, of said letter carriers' mail bags or satchels) and the terms of the said contract with the Post Office Department of the United States Government, and that office expenses of the said party of the first part, salaries of its officers, etc., shall not be included in calculating the said net profit arising out of said contract for the manufacture of said letter carriers' mail bags or satchels.

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In testimony whereof we have hereunto set our hands and affixed our respective seals, each in the presence of two subscribing witnesses.

POSTAL DEVICE AND LOCK CO., [SEAL.]
By WADE CHANCE, *Pres't.*
GEO. E. LORENZ. [SEAL.]

Witnesses to the signature of P. D. & L. Co.:
LEWIS E. FRANKLIN.
WM. R. BRANDON.

Witnesses to the signature of Lorenz:
JOS. H. BLACKWOOD.
JAMES K. POLK."

And thereupon the counsel for the United States offered in evidence another contract between the same parties, the signatures to which were admitted to be genuine by counsel for the Government and by counsel for the defendant, and which is hereafter referred to as the second Lorenz contract and is as follows:

EXHIBIT 86.

This memorandum of agreement, entered into this ——, 1902, by and between the Postal Device and Lock Company, organized under and by virtue of the laws of the State of New Jersey, and having one of its offices at #11 Broadway (Borough of Manhattan) in the City and State of New York, party of the first part, and George E. Lorenz, of Toledo, County of Lucas, and State of Ohio, party of the second part, witnesseth:

Whereas, the parties hereto did on the third day of June, A. D. 1902, enter into a certain agreement having for its object the securing of a contract with the United States Post Office authorities for the manufacture of letter carriers' mail bags or satchels for the four years next succeeding the 1st day of July, 1902, and

Whereas, the bid or proposal to furnish said letter carriers' mail bags or satchels under and by the terms of said agreement between the parties hereo, dated the third day of June, 1902, was to be and was presented in the name of the Postal Device and Lock Company, party of the first part, and

Whereas, said bid or proposal for furnishing said letter carriers' mail bags or satchels for said period of four years next succeeding

July 1st, 1902, was accepted by the Post Office Department, acting through the Post Master General, and a contract by and between the said Department and the said Postal Device and Lock Company, party of the first part herein, was duly entered into and executed by the said parties thereto, the Post Office Department being rep-
85 resented by the said Postmaster-General and the Postal Device and Lock Company by its President, said contract being dated on the 25th day of June, 1902.

Now, therefore, in consideration of the premises and of the mutual covenants and agreements of the parties aforesaid, it is hereby covenanted and agreed between the parties of the first and second parts as follows:

First. That the Postal Device and Lock Company, of the first part, shall and is to have the exclusive right, under said contract of June 25th, 1902, with the Postal authorities, hereinbefore referred to, to place contracts for the manufacture of the body portions of said letter carriers' mail bags or satchels, styled "A," "B" and "C," in said contract of June 25th, 1902, it being understood and agreed that the term "body portions" shall be construed to mean the bags or satchels, excluding the shoulder straps required under the said contract of June 25th, 1902, with the Post Office Department.

Second. That the said Postal Device and Lock Company, of the first part, shall retain out of the contract price, stated in the said contract with the United States Government, the sum of one dollar and seventy-four cents for each "A" bag or satchel, the sum of one dollar and ninety-seven cents for each "B" bag or satchel, and the sum of two dollars and thirty-one cents for each "C" bag or satchel, manufactured and furnished to the United States Government, F. O. B. Hartford, Connecticut, or other place of manufacture, by the said Postal Device and Lock Company; the said Postal Device and Lock Company to pay from the retained sums herein referred to the cost of all material necessarily used in the manufacture of the said "body portions," and also the cost of manufacturing the "body portions" of the above referred to satchels, so long as said satchels are manufactured of the same quality or grade of Pegamoid or Fabrikoid leather as that of which the sample bags are made which were furnished to the United States Government; any saving effected or balance remaining after delivery of the said satchels "A," "B," and "C" at the prices herein agreed upon to be retained out of the contract price with the United States Government, above referred to, to be the exclusive property of the Postal Device and Lock Company.

The parties to this agreement further agree, that should the said United States Government require during the four years next succeeding the first day of July, 1902, that the said "body portions" of said satchels be made of other material than Pegamoid or Fabrikoid leather than that of which the sample bags furnished to the United States Government are made, that a sufficient sum be retained by the said Postal Device and Lock Company to enable it to manufacture the said satchels of whatever materials may be designated or required and in addition to net the Postal Device and Lock

Company a profit of twenty-five cents on each of said satchels so manufactured and furnished to the United States Government.

Third. That the said George E. Lorenz, party of the second part, shall and is to have the exclusive right to furnish or cause to be furnished to the said Postal Device and Lock Company from
86 time to time and in such quantities at a time as may be required under said contract of June 25th, 1902, with the Postal authorities, hereinbefore referred to, all shoulder straps used or required to be used under and by virtue of the said contract of June 25, 1902; and the said George E. Lorenz, party of the second part, binds himself to furnish and deliver at Hartford, Connecticut, or at any other place designated by the party of the first part or by the United States Government, shoulder straps, as required, satisfactory to the said United States Government, and agrees to be held accountable in every particular for the proper delivery of the said shoulder straps as required.

Fourth. That the said Postal Device and Lock Company, party of the first part, shall pay over to the said George E. Lorenz, party of the second part, the sum of forty-five cents for each "A" bag or satchel, the sum of one dollar and nineteen cents for each "B" bag or satchel, and the sum of eighty-four cents for each "C" bag or satchel so long as the "body portions" of said "A," "B," and "C" bags or satchels are manufactured of Pegamoid or Fabrikoid leather, and for which bags shoulder-straps have been furnished by the party of the second part, and which satchels have been manufactured and furnished by the said Postal Device and Lock Company to the United States Government under said agreement or contract of June 25th, 1902, hereinbefore referred to; the said sums to be the exclusive property of the said George E. Lorenz, party of the second part; and which sums are accepted by him in full settlement of all claims against the said Postal Device and Lock Company, party of the first part, and the United States Government, and for any interest the said George E. Lorenz may have in the said contract of the Postal Device and Lock Company with the United States Government, bearing date of June 25th, 1902; any saving effected or balance remaining after delivery of the said shoulder-straps by the said George E. Lorenz, party of the second part, it being understood that the said George E. Lorenz, party of the second part, is to be paid the said amounts on each shoulder strap or satchel delivered to the United States Government, immediately after warrant in payment for said bags or satchels shall have been drawn, issued, delivered and paid to the said Postal Device and Lock Company, of the first part, by the Post Office Department of the United States Government, after deducting the necessary traveling expenses incurred by the Postal Device and Lock Company, in connection with the manufacture of said satchels, "A," "B," and "C." It being understood between the parties that said George E. Lorenz is to receive payments as herein provided on the same number of shoulder straps as there are bags manufactured and delivered by the Postal Device and Lock Company to the United States Government. The payments for bags and shoulder straps by the United States Government to be evidence

of satisfactory delivery by the said George E. Lorenz, party of the second part.

Fifth. The agreement by and between the parties hereto dated the third day of June, A. D. 1902, is hereby revoked only in so far as it conflicts with the provisions of this agreement.

87 In witness whereof the said parties hereto have hereunto set their hands and affixed their seals on the date first above written.

[SEAL.] POSTAL DEVICE & LOCK CO.
WADE CHANCE, *Pres't.*
GEORGE E. LORENZ.

Witnesses to the signature of P. D. & L. Co.
WM. G. CRAWFORD.
JOSEPH P. MALLOY.

Witnesses to signature of Geo. E. Lorenz.
FRANK C. SCHMIDT.
FRED M. WEISS."

At the foot of said contract was the following statement, the signatures to which were admitted by counsel for the Government and by counsel for the defendant to be genuine, which statement the counsel for the Government also gave in evidence to the jury:

"May 29, 1903: The foregoing contract was prepared during the month of July, 1902, and was executed by all parties during either the month of July or the forepart of August, 1902, and before any order for satchels had been placed with the Postal Device and Lock Company. The date was erased for some reason not remembered, and the correct date of execution was never inserted.

JAMES K. POLK.
WM. G. CRAWFORD."

Thereupon counsel for the Government offered in evidence the following instrument purporting to be an agreement between the New York Leather and Paint Company, a corporation, and the defendant, the signatures to which were admitted to be genuine by counsel for the Government and by counsel for the defendant:

"This memorandum or agreement entered into this 21st day of April, A. D. 1902, by and between the New York Leather and Paint Company, a corporation of the State of New Jersey, party of the first part, and William G. Crawford, of Washington, D. C., party of the second part, witnesseth:

That for and in consideration of one (1) dollar, in lawful money of the United States, in hand paid, the receipt of which is hereby acknowledged, the party of the first part has agreed and does hereby agree to give the said party of the second part an option on the exclusive use in the manufacture of mail bags or satchels for use by letter carriers, of a certain imitation leather owned by said party of the first part, known as "pegamoid" or "fabrikoid," at the following prices, to wit: #1800, at $1.12½ per yard; 54 inches wide, 15%

discount, with 2% discount additional for cash at ten days; 36 inches wide 75 cents per yard, subject to same discounts. #2000, at 80 cents per yard, 50 inches wide, and 60 cents per yard, 36 inches wide, 10% discount, with 2% discount for cash at ten days.

This said exclusive right or option shall expire on the 1st
88 day of July, 1902, if the said party of the second part does not offer to close contract for the purchase of said pegamoid or fabrikoid on or before said 1st day of July, 1902, at prices above named.

The said party of the first part further agrees, if requested so to do by the said party of the second part, to furnish said party of the second part with a written statement showing that the said party of the second part is alone authorized to submit samples and offer for sale "pegamoid" or "fabrikoid" leathers for use in the manufacture of letter carriers' mail bags or satchels.

WM. G. CRAWFORD. [SEAL.]

Witnesses to signature of Wm. G. Crawford:
D. A. GOURICK.
JAMES K. POLK."

Thereupon counsel for the United States offered in evidence a contract dated September 23rd, 1902, between the Fabrikoid Company, a corporation, and the Postal Device and Lock Company, with an endorsement thereon signed by Spencer Trask, the signatures to which, including that of Spencer Trask were admitted to be genuine by counsel for the Government and by counsel for the defendant, who admitted that Crawford has had prepared the Contracts Exs. D. & E. To the introduction of said paper in evidence counsel for the defendant objected on the ground that contracts or agreements between the Postal Device and Lock Company and its sub-contractors were wholly irrelevant to the case on trial. But the Court overruled the objection. To this ruling of the Court counsel for the defendant duly excepted.

The paper was thereupon read in evidence to the jury by counsel for the United States. A copy of said paper is hereto appended and marked Exhibit D, and made a part hereof.

Thereupon counsel for the Government offered in evidence the contract dated August 12th, 1902, between the Wm. H. Wiley & Son Company of Hartford, Connecticut, and the Postal Device and Lock Company, together with an endorsement thereon signed, Spencer Trask. The signatures of this instrument, including that of Spencer Trask were admitted to be genuine by counsel for the Government and by counsel for the defendant. Counsel for the defendant, however, objected to the introduction of the paper in evidence on the same ground as made to the contract of which Exhibit D is a copy. But the Court overruled the objection. To which ruling counsel for the defendant duly excepted.

The paper was thereupon read in evidence to the jury by counsel for the Government, and a copy thereof is hereto appended, marked Exhibit E and made a part hereof.

Thereupon counsel for the Government offered in evidence certain paragraphs from the Postal Laws and Regulations, a copy of which is hereto appended, marked Exhibit F, and made a part hereof.

Thereupon counsel for the Government offered in evidence a power of attorney from the Postal Device and Lock Company to William G. Crawford, dated October 8th, 1902, by which power was conferred upon said Crawford, as the attorney of said company, to represent it before the Post Office Department of the United States Government in matters pertaining to said contract of June 25th, 1902, and all matters pertaining to the accounts of said company, and by which paper it was requested that all warrants be sent to the care of the company's "said attorney, William G. Crawford, Washington, D. C."

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Thereupon the counsel for the Government offered in evidence the following paper, and gave to the jury evidence tending to show that the signatures appearing thereon of Wade Chance, Thomas W. McGregor and A. W. Machen were genuine:

Postal Device and Lock Company.

11 BROADWAY, NEW YORK, *October* 3, 1902.

Postal Device and Lock Company to U. S. Post Office Department, Rural Free Delivery Service.

5000 carriers' satchels, Class B, at $3.16, total, $15,800.00.
Received payment,
POSTAL DEVICE AND LOCK CO.,
WADE CHANCE, *President.*

Supplies furnished in accordance with this bill.
THOMAS W. McGREGOR,
Clerk in Charge.

Approved:
A. W. MACHEN,
Gen'l Sup't F. D. System."

and gave to the jury evidence tending to prove that the account represented by said bill was approved by the Auditor of the Treasury Department for the Post Office Department, and that accordingly a warrant was issued, dated October 15th, 1902, signed by said Auditor, addressed to the Treasurer of the United States for the payment to the Postal Device & Lock Company or order of $15,800., and that shortly thereafter said warrant was endorsed for deposit by the Postal Device & Lock Company by John Moody, its Treasurer, and was deposited in the Bank of America of New York to the credit of Spencer Trask & Co., and was duly paid by the Assistant Treasurer of the United States on the 18th day of October 1902.

Thereupon the Government gave evidence to the jury tending to prove that under said contract of June 25th, 1902, between the United States and the Postal Device and Lock Company, other payments were made to the Postal Device and Lock Company by Treasury warrants, dated as follows and in the amounts following:

December 20, 1902	$5,481.57
January 15, 1903	3,337.02
March 17, 1903	2,374.74

Said warrants being of the tenor following:

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Warrant No. 12305.

Post Office Department.

(New York, N. Y.,
Dec. 24, 1902.
Paid.)

DEC. 20, 1902.

To the Treasurer of the United States:

Pay to Postal Device & Lock Co., or order $5,481.57 fifty four hundred, eighty one & 57/100 dollars.

C. H. BUCKLER,
Superintendent System of Postal Finance,
Office Third Assistant Postmaster General.

The Assistant Treasurer of the United States. New York. I. K. W. will pay this warrant.

G. C. BANTZ,
Deputy Assistant Treasurer of the United States.

Countersigned:

HENRY A. CASTLE, *Auditor,*
By H. ALLEN,
Deputy Auditor for the P. O. Dep't.

Auditor's Certificate No. 68592.
Residence: F. D. N. Y. c/o Wm. G. Crawford, att'y, City.

Endorsements: Pay to order of Spencer Trask & Co., Postal Device & Lock Co. Wade Chance, President. Pay Bank of America, or order, Spencer Trask & Co. The Bank of America, Per ——— ———, Att'y. U. S. Treasurer's Office Mar. 17, 1903, p. m. Div. of P. O. Accounts.

Warrant No. 13418.

Post Office Department.

JAN. 15, 1903.

To the Treasurer of the United States:

Pay to Postal Device & Lock Co. or order $3337.02 thirty-three hundred thirty-seven & 02/100 dollars.

C. H. BUCKLER,
Superintendent System of Postal Finance,
Office Third Assistant Postmaster General.

91 The Assistant Treasurer of the United States. W/ New York will pay this warrant.

G. C. BANTZ,
Deputy Assistant Treasurer of the United States.

Countersigned:

HENRY A. CASTLE, *Auditor,*
By H. ALLEN,
Deputy Auditor for the P. O. Dep't.

Auditor's Certificate No. 2916.

Residence: c/o Wm. G. Crawford, #1407 F street, City (F. D. N. Y.)

(New York, N. Y.,
Jan. 23, 1903.
Paid.)

Endorsements: Pay to order of Spencer Trask & Co. Postal Device & Lock Co. Wade Chance. Pay Bank of America, or order, Spencer Trask & Co. The Bank of America, per —— ——, Att'y. Endorsement guaranteed. The Bank of America, New York. Received payment through the New York Clearing House, Jan. 17, 1903. The Bank of America. W. M. Bennett, cashier. U. S. Treasurer's Office, Jan. 15, 1903, p. m., Div. of P. O. Accounts.

Warrant No. 18407.

Post Office Department.

MAR. 17, 1903.

To the Treasurer of the United States:

Pay to Postal Device and Lock Co. or order $2,374.74 twenty three hundred seventy four & 74/100 Dollars.

C. H. BUCKLER,
Superintendent System of Postal Finance,
Office Third Assistant Postmaster General.

The Assistant Treasurer of the United States, New York I. K. W. will pay this warrant.

J. F. MELINE,
Assistant Treasurer of the United States.

Countersigned:

HENRY A. CASTLE, *Auditor,*
By H. ALLEN,
Deputy Auditor for the P. O. Dep't.

Auditor's Certificate No. 16316.

(New York, N. Y.,
Mar. 21, 1903.
Paid.)

Residence: c/o W. G. Crawford, 1407 F. St., Wash., D. C.

92 Endorsements: Pay to the order of Spencer Trask & Co., Postal Device and Lock Co. Wade Chance, President. Pay Bank of America, or order. Spencer Trask & Co., The Bank of America, per —— ——, att'y. U. S. Treasurer's Office, Mar. 17, 1902, p. m. Div. of P. O. Accounts.

Warrant No. 7015.

Post Office Department.

Oct. 15, 1902.

To the Treasurer of the United States:

Pay to Postal Device & Lock Co. or order $15,800# fifteen thousand eight hundred # dollars.

C. H. BUCKLER,
Superintendent System of Postal Finance,
Office Third Assistant Postmaster General.

The Assistant Treasurer of the United States, New York I. K. W. will pay this warrant.
G. C. BANTZ.

Countersigned:

HENRY A. CASTLE, *Auditor,*
By H. ALLEN,
Deputy Auditor for the P. O. Dep't.

Auditor's Certificate No. 55592.

(New York, N. Y.,
Oct. 18, 1902.
Paid.)

Residence: c/o W. G. Crawford, City.

Endorsements: For deposit Postal Device & Lock Co. John Moody, Pres'd't. Pay Bank of America, or order, Spencer Trask & Co. The Bank of America, per —— ——, att'y. Endorsement guaranteed, The Bank of America, New York. U. S. Treasurer's Office, Oct. 15, 1902. Div. of P. O. Accounts.

A copy of the bill of the Postal Device & Lock Company, for which said payment of $5481.57 was made (omitting all the post offices mentioned in it except the first and the last) is hereto appended marked Exhibit G, and made part hereof.

The papers which were offered in evidence by the Government and which led up to the issuing of said warrants for $3,337.02 and $2,374.74, respectively, were similar to those of which Exhibit G is a copy, except that the payment of $3,337.02 was for 1518 satchels of Class A and 4 satchels is of Class C, and said payment of $2,374.74 was for 1011 satchels of Class A and 51 satchels of Class C.

The counsel for the Government further gave evidence to the jury tending to prove, and the defendant admitted that no shoulder straps were furnished by the Postal Device and Lock Company with any of

93 the satchels for which said payments of $15,800, $5,481.57, $3,337.02 and $2,374.74, respectively, were made, but that shoulder straps of the kind called the Lamb strap were furnished by the Government to the Postal Device & Lock Co. for all such satchels.

Thereupon the counsel for the Government offered in evidence certain papers produced from the office of the Auditor for the Treasury Department for the Post Office Department and proved to be genuine, for the purpose of proving the payment by the United States of certain bills to George D. Lamb for shoulder straps.

To the introduction of said papers in evidence counsel for the defendant objected on the ground that they were irrelevant and incompetent against the defendant, Crawford, but the Court overruled the objection and admitted said papers in evidence. To which said ruling of the Court counsel for the defendant duly excepted.

Said papers were thereupon read in evidence to the jury by counsel for the Government. A copy of the bills the payment of which was so proved is hereto appended, marked Exhibit H, and made a part hereof.

Thereupon counsel for the Government, having proved the genuineness of the signature of the defendant to a certain letter dated "N. Y., Sept. 27," offered to read the same in evidence to the jury, to which counsel for the defendant objected on the ground that while it was competent for the Government to prove the relations between the defendant and August W. Machen, it should not be allowed to prove it by reference to particular transactions, but should be confined to general testimony as to the nature of their relations.

But the Court overruled the objection, stating that the letter ought to be received as tending to show what, if any, acquaintance the defendant had with said Machen.

To this ruling of the Court counsel for the defendant duly excepted. The letter was thereupon read in evidence to the jury by counsel for the Government, and is as follows:

EXHIBIT 69.

473 WEST END AVE., N. Y., *Sept.* 27.

A. W. Machen, Esq., 1823 Corcoran St.

MY DEAR SIR: Will you be so good as to let me know about the date on which the proof for the P. M. S.'s report goes to the Public Printer. Also when you must have the description of the mail box, etc. I am thinking of coming on to Washington to give the information necessary, and would like the above information unofficially.

Yours truly, WM. G. CRAWFORD."

(NOTE.—At the top of this paper a shorthand endorsement, in pencil, appears, which reads as follows:

"I will be pleased to advise you in this matter when I return from the West in about ten days.") (Said memorandum was not read to

the jury at the time but was afterwards read in evidence by the defendant.)

94 Thereupon counsel for the Government, having proved the signature of the defendant to another letter, dated July 12th, 1898, to be genuine, offered the same in evidence to the introduction of said paper in evidence counsel for the defendant objected on the same ground as that on which objection was made to the letter dated September 27th. But the Court overruled the objection and admitted the paper in evidence. To which ruling counsel for the defendant duly excepted.

Said letter was thereupon read in evidence to the jury by counsel for the Government, and is as follows:

EXHIBIT 70.

Confidential.

473 WEST END AVE.,
NEW YORK CITY, *July* 12/98.

DEAR Mr. MACHEN: I was obliged to leave Washington last Sunday to come here on some other business, so could not remain to finish up at the Department. Mr. Hamlet said he would write me a letter on the box features which would be of advantage, as he saw them, to his office. I want to ask you to push it along. Also let me know if the P. M. G. will likely be at his office the balance of this week. I find everything all right at this end and hope you will give me favorable news from your friend:—later on. Mr. Hamlet asked me what you thought of the box, and I told him you found fault with the weight of bag and the letter chute on box. I think that is enough! Please let me hear from you if only a word by return mail. Do you think it best to show the box to P. M. G. now, or wait until Fall. When do you make estimate for appro. to Congress?

Yours truly, WM. G. CRAWFORD."

Counsel for the Government thereupon produced several letters purporting to have been written to Wade Chance by defendant, Crawford, the signatures to which were admitted by counsel for said defendant to be genuine; and they were read in evidence to the jury by counsel for the Government. Said letters are dated, respectively, April 29th, 1902, May 19th, 1902, May 28th, (1902), June 6th, 1902, June 9th, (1902), June 19th, 1902, June 20th, (1902), June 21st, 1902, July 12th, 1902, October 10th, (1902), October 12th, (1902), and January 15th, 1903. Copies of said letters are hereto appended, marked Exhibit I and made a part hereof.

Counsel for the Government also duly proved the signatures to two letters, signed, Postal Device and Lock Company by William G. Crawford, addressed to the William H. Wiley & Son Company at Hartford, Connecticut, one dated April 19th, 1902, and the other August 9th, 1902, and read the same in evidence to the jury. Copies of said letters are hereto appended, marked respectively, K and L.

Counsel for the Government then read in evidence to the jury the following letter, the signature of the defendant Crawford to which was admitted by his counsel to be genuine:

95 "930 F St., *July 10th.*

Mr. Geo. E. Lorenz, 1903 Madison Ave., Toledo.

My Dear Sir: I send you by express today a sample bag. I find the hand sewed cost more money. You remember our figures were based on machine sewed but it is doubtful whether that would be satisfactory.

"In a quiet way find out prices for making up bag as per sample. You will know how to go about it. I want cost outside material in bag proper (Pegamoid) which we will furnish. Send me memo. statement of your understanding of cost and profit remaining to you. Something separate which can be kept as memo. The Co. think they ought to get 25¢ bag on ducks which were lost by high bids! What say you.

Do not worry at all there will be margin, but I would like to know how well you can do in the matter if you can get figures at all. Return sample earliest opportunity.

Yours truly, W. G. CRAWFORD."

Also the following letter, the initials to which—W. G. C.—were admitted by counsel for the defendant to have been written by him:

"Hartford, Connecticut, *September 25th.*

Dear Sir: Enclosed find papers. I have signed your name in pencil. Sign in same place; need not rub out pencil. I can do that afterwards. Your two witnesses sign on last two pencil lines.

You will take note that the amounts allowed you for straps and profit are 45, 1.19 & 84.

Yours truly in haste, W. G. C."

Thereupon counsel for the Government produced another letter, dated October 22nd, purporting to be addressed, Mr. George E. Lorenz, Toledo, and to be signed, W. G. Crawford, with the postscript purporting to be signed, P. D. & L. Co., W. G. C., the signatures and initials of the defendant being admitted to be genuine by counsel for the defendant. Which paper was read in evidence to the jury by counsel for the Government, and the following is a copy thereof:

Page 313.

"1208 18th St., *Oct.* 22.

Mr. Geo. E. Lorenz, Toledo.

Dear Sir: The Postal Co. send me check for me to sign and remit, for $5441.35, with the explanation that the expenses were large on the 5,000 order owing to the great amount of travelling necessary to find suitable mfg. place and owing to the expenses of the various and long trips to factory in the beginning of the work to get it properly under way and to be there to hurry up the order.

96 Please formally acknowledge receipt of check in full payment 5000 lot by return mail.

Yours truly, W. G. CRAWFORD,
For Postal Device & Lock Co.

We are very anxious to have some more straps for the next delivery, shortly, say about 2,000 straps to be followed by 2,000 more in a few weeks. Please hurry them forward as you did the first lot, and oblige

Your truly, P. D. & L. CO.
W. G. C."

(The following appeared in the margin in lead pencil) "Please return this for copy, or send copy."

The other letters, dated respectively, December 23rd, and January 20th, 1903, were produced by counsel for the Government, and the signatures of defendant thereto were admitted by his counsel to be genuine.

Thereupon said letters were read in evidence to the jury by counsel for the Government, and are as follows:

"Postal Device and Lock Co., 1407 F Street.

WASHINGTON, D. C., *Dec.* 23, 1902.

Geo. E. Lorenz, Esq., Toledo, Ohio.

DEAR SIR: Enclosed please find check for $992.90 amount due you as per agreement, on 2503 satchels "A," less expenses of this Co. chargeable to you.

Yours truly, POSTAL DEVICE AND LOCK CO.
WM. GORDON CRAWFORD,
Mgr., Att'y."

EXHIBIT 125.

"Postal Device and Lock Company, 1407 F Street.

WASHINGTON, *D. C., Jan. 20th,* 1903.

"Geo. E. Lorenz, Toledo, Ohio.

DEAR SIR: Enclosed I send you letter from the president of this Co. which encloses your check for last Government payment. My attention was called to the complaint from the factory regarding straps and I was asked to note same, sign check, and forward you the letter from our president.

You will please note that the receipts enclosed you are to receive your signature and to be returned to the above Co.

Yours very truly, POST. DEVICE AND LOCK CO.,
By WM. GORDON CRAWFORD,
Mgr. & Attorney.

686.46
N. Y.
No. 4815 on Sp. Trask & Co.

97 Counsel for the Government thereupon produced a letter, dated January 17th, 1903, purporting to be signed "Postal Device & Lock Company, Wade Chance, President."

WILLIAM E. COLT the witness under examination having testified that he knew Wade Chance's handwriting, the following transpired:

By Mr. BAKER:

Q. "I now show you exhibit No. 124, and ask you who signed the same?

Mr. WORTHINGTON: "I have no doubt that is all right but you had better prove it."

A. "Chance."

Mr. BAKER: "We offer No. 124 in evidence."

Thereupon said letter was read in evidence to the jury by counsel for the Government.

Thereupon counsel for the government called as a witness Mr. ROBERT J. WYNNE, who testified that he was consul general of the United States at London; that in April, 1902 he was appointed First Assistant Postmaster General, and assumed the duties of that office on April 19th, 1902; that he continued to hold that office until October 10th, 1904, when he was appointed Postmaster General, and continued to be Postmaster General until March 7th, 1905, when he was appointed to his present position; that while he was First Assistant Postmaster General the work of his office was divided among six divisions, one of which was the free delivery division, which was under his supervision; that that division deals with letter carriers and the delivery of mail, and has under it the letter carriers in the city, the letter carriers in the country, known as the rural carriers, and the special delivery messengers; also that that division arranged for all supplies for the free delivery; that when witness was appointed First Assistant Postmaster General, August W. Machen was at the head of the free delivery department, and remained at its head for nine or ten months afterwards; that Machen's duties among other things, were to prepare contracts for the awarding — supplies and the specifications under which contracts should be awarded—to prepare all papers pertaining to the free delivery service and the transaction of business; that he was also to exercise supervision over all expenditures; to see that the money was taken from the right appropriation; that the awards were made according to law; that the goods were inspected; that all those matters were referred to witness by Machen as having been attended to for his approval; that Machen was responsible to witness for the conduct of the free delivery service in all its branches in all its details, and witness dealt with no one else; that the witness, of course, was responsible to the Postmaster General; that every paper coming into the department would have the initial of the clerk, the initial of the chief, the initial of the General Superintendent, witness's initial; and then the signature of the head of the department; that as to the approval of
98 any of the papers in the routine of the office witness would rely absolutely on the initials of the man next below him—August W. Machen; that bills for rural free delivery supplies would come to witness initialed by Machen; that witness would not put his name on any paper, unless Machen's initials appeared thereon; that

for a time he recognized the initials of A. W. M. as Machen's, but found out afterwards that there was a clerk down there who imitated Machen's signature; that when the witness discovered that he stopped it; that in the first instance the necessity for the purchase of goods and the amount would be determined by Machen; and that after a contract was signed by the Postmaster General Machen would attend to getting goods under the contract and the ordering of the quantity needed.

Witness identified as Machen's signature the initials on the order of June 6th, 1902, in evidence, appointing a committee, and on the report of that Committee, in evidence, dated June 17th, 1902, and said that Machen had represented it to him as an exceedingly strong Committee, and had pictured to him the advantages of the pegamoid material; that the initials A. W. M. on the contract of June 25th, 1902, in evidence, the witness believed to be Machen's; witness also identified his own signature, and that of Machen's on the bills upon which the payments to the Postal Device and Lock Company were made of October 15th, 1902, $15,800.00; December 20th, 1902, $5481.57; January 15th, 1903, $3337.02; and March 17th, 1903, $2374.74. Also upon the order of August 5th, 1902, for the purchase of five thousand satchels of class B.

Witness stated that he signed all those papers on Machen's certification.

Witness also identified the initials of A. W. M. on the papers which resulted in the payments made for the Lamb strap.

Thereupon the government exhibited to the witness and read in evidence to the jury a letter of which the following is a copy:

"POST OFFICE DEPARTMENT,
FIRST ASSISTANT POSTMASTER GENERAL,
WASHINGTON, *March* 21, 1903.

Mr. A. W. Machen, General Superintendent Free Delivery Division.

SIR: The Postmaster General has directed an investigation by the Fourth Assistant Postmaster General of charges affecting the conduct of your office. Inspector M. C. Fosnes and other inspectors have been assigned to this duty. You are hereby directed to give them free access to all the files and records under your control, and furnish them whatever information and assistance they may require in the conduct of such investigation.

Very respectfully, R. J. WYNNE,
First Assistant Postmaster General."

Witness stated that he signed that letter.

On direct examination Mr. Wynne further testified that he had seen Wade Chance in London, England, about November 1st, 1905, and urged him to come to Washington as a witness; and that Chance said that he could not come on account of his business engagements in London; that Chance resides in London at the present time.

On cross examination Mr. Wynne said that it was about two months after he became First Assistant Postmaster General that

he learned that a clerk of Machen's, a Miss Liebhardt, was in the habit of signing Machen's name and initials; and that witness's information was that up to that time somebody had been signing Machen's initials and his signature in such a way that witness had not been able to detect the difference between the imitation and the genuine signature and initials; that his recollection is that when he found that out that he required his chief clerk to be very positive that Machen had signed the papers; that as to papers that came before him prior to that time he could not tell which were written by the clerk and which by Machen; that Machen had a very large division, increasing rapidly in size, as the rural free delivery service grew; that Machen's office was divided into divisions with subordinate clerks in charge, so that many matters which witness has described came before Machen in the routine, just as they came from Machen to witness; that witness read what was contained in the report of the Committee that recommended the giving of this contract to the Postal Device and Lock Company, and that Machen did not tell him anything about pegamoid except what was embodied in that report; that of the three members of that Committee, one, Major Bell, the witness relied upon as particularly representing him; that another, Mr. King, was a personal friend of the Postmaster General, and represented him; that the third, Mr. Speich, was Mr. Machen's representative on that Committee; that all three of these men were still holding their positions in the Post Office Department; that when a patented article was to be purchased by the Department there was no advertisement, because there could be but one bidder—that in such a case the purchase was made under the emergency clause of the statute; that in the routine of the office the demand for satchels if legitimately created would be created first by postmasters sending in their requisitions; that as to rural free delivery satchels (class B satchels) they were delivered in large quantities at the department and shipped by the department to the rural stations as they were needed, and that the other satchels would be sent by the contractor direct to the city where they were wanted.

On further cross examination the witness said that when he became First Assistant Postmaster General, he had every confidence in Machen; that he continued to have that confidence for some three months possibly—after the contracts were all awarded on the first of July—the beginning of the fiscal year; that after that in regard to Machen's recommendations he was very careful what he did.

Thereupon the Government offered evidence tending to prove that certain payments were made to George E. Lorenz by the Postal Device & Lock Company, by checks signed by Wade Chance, as president of said Company, and countersigned by the defend-
100 ant as Device & Lock Company, by checks signed by Wade Chance, as follows:

October 21, 1902	$5,441.35
December 22, 1902	992.90
January 17, 1903	686.46

also that said Lorenz sent to said Crawford by a bank draft payable to bearer, dated October 24, 1902, the sum of $1,435.34—that said

Crawford collected the amount of said draft in cash from the bank on which it was drawn in New York City on November 7, 1902; that on the same day Crawford deposited in another bank in New York City, where he kept an account, the sum of $1,465 in cash, that on or about the 24th day of December, 1902, said Lorenz in Toledo sent to said William G. Crawford by Adams Express a money package, the value of which marked on the package was $250., and that said Crawford received the same from Adams Express Company in Washington on the 26th day of December, 1902—also that George E. Lorenz sent to the defendant a draft, dated January 22nd, 1903, for $171.62, payable to the order of William G. Crawford; that on or about the 20th day of February, 1903, said Crawford had said draft cashed at the Bank of Riggs & Company in the City of Washington, by endorsing the same to the order of the Burnham Manufacturing Company, and then endorsing the same for the Burnham Manufacturing Company, to his own order as Treasurer of that Company.

Thereupon counsel for the Government examined as a witness on behalf of the United States JOHN ASPINWALL, who testified that he is the president of the Fabrikoid Company of Newburgh, New York; that in the early part of 1902 he was general manager of the New York Leather and Paint Company, and in 1903 was president of the Fabrikoid Company which companies manufacture the materials known as Fabrikoid and Pegamoid.

Mr. Aspinwall identified as his own two letters dated respectively, February 18, 1902 and February 28, 1902, and stated that he wrote them and sent them to the defendant at or about the time they bear date. Said letters were admitted by the counsel for defendant and were accordingly read in evidence to the jury by counsel for the Government. A copy of said letter of February 18 is hereto appended, marked Exhibit M, and a copy of said letter of February 28, 1902, is hereto appended, and Marked Exhibit N, and both are made a part hereof.

Thereupon said Aspinwall, on his direct examination, further testified that the defendant Crawford visited his place of business at Newburgh, New York in the latter part of 1903, and requested the privilege of looking over the correspondence of the Fabrikoid Company—his letters to the company and copies of the company's letters to him in the company's letter books; that said Crawford was permitted to have the copies and his letters to the company, the witness not being present when said Crawford made such examination;

101 that after the defendant left there the witness discovered that a copy of a letter that the company had written to the defendant had been removed from the copy book; that the letters that the company writes are copied on a carbon sheet and the copies are then pasted in a letter book consecutively under the given dates, and are then indexed in the copy book; that the letter which had been removed from the copy book had been indexed, and that the index covering that letter had been erased.

The witness thereupon produced the letter book to which he referred, from which a copy of the letter had been removed, and the

same was exhibited to the jury by counsel for the Government, showing them the place from which the letter had been taken and where the erasure had been made.

Thereupon counsel for the Government exhibited to the witness a letter which had just before been produced in open court by counsel for defendant; counsel for the defendant thereupon admitted that the defendant took the letter from the letter-book and made the erasure of the reference to the page, and the witness identified the letter so produced as the original letter taken from his copy book; the witness also identified a letter dated April 18th, 1902, as a letter which he had received from the defendant, and which counsel for the defendant admitted that defendant had taken at the same time that he took the letter from the copy book; and the witness stated that he received said letter of April 18th from the defendant. Counsel for the Government then read in evidence to the jury said letter of April 18th and also the letter dated April 21st, replying thereto, which had been removed from the letter book of the witness' company; and the following are copies of said letters:

"D House of Representatives.

(604)

WASHINGTON, 930 F ST., *April* 18, 1902.

(EX. CRAWFORD NO. 11.)

Apr. 21, 1902.

N. Y. Leather and Paint Co., New York.

DEAR SIRS: I am glad to report very fine progress with the mail bag contract of which I wrote on March 8th. I mistrust somewhat an employee of mine from Ohio and would be glad to know if you have had any other calls for your leather for same purposes, and a call in particular on the 17, 18 or 19 inst. from a Mr. Lorenz? If you do please turn him down and notify me.

My letter of 8th March fully explains matters. I want the samples I submit of bags of your material to be the only ones and feel confident of large contract for your leathers under those circumstances. We have, and are furnishing bags and boxes on contract secured by me, and I am very confident of increased orders if I only have clear field.

Of course the expense in such matter is considerable and as a business proposition and for a full and complete record of our
102 understanding as per correspondence I have requested Mr. Polk to send you agreement for signature.

My sample & tests have been most successful & I feel sure of large orders before July 1st, which is not far distant!

I have not forgotten about the paint for boxes & will come to see you in N. Y. on this matter early in May. I shall be in New Orleans Thursday, Friday and Saturday of next week & hope you can get sample of Nuberg & Pegamoid there by then. Address to 612 Royal St., New Orleans, La., which will reach me also.

Yours very truly, WM. G. CRAWFORD.

(EX. CRAWFORD No. 12.)

30-150-121.

Mr. William G. Crawford, #930 F St., Washington, D. C.

DEAR SIR: We have your favor of the 18th and we are glad to hear that you are making progress. We have had no call from any Mr. Lorenz, and certainly would not do a thing to interfere with the progress of your negotiations.

We have signed the contract *with* you sent us, and forwarded the same today to Mr. Polk. In this contract I made no statements relative to your commissions, but simply gave the discounts which we had quoted you.

Very truly yours,

THE NEW YORK LEATHER AND PAINT CO.

—— ——, *General Manager.*"

The witness thereupon stated that when he discovered the loss of the letter from his copy book *the* wrote to the defendant a letter, and the following occurred:

By Mr. BAKER:

Q. "Have you got your letter here?"

A. "Yes, sir."

Q. "Have you the original, Mr. Worthington?" (By Baker.)

Mr. WORTHINGTON: "Yes, I have that correspondence here, but he can read it from the book."

The WITNESS: "This is on December 7th, 1903."

By Mr. BAKER:

Q. "Read the letter that you wrote."

A. "This is written from Newburgh (Reading):

DECEMBER 7, 1903.

"Mr. William G. Crawford, 1407 F Street, Washington, D. C.

DEAR SIR: We have your favor of the 4th, showing us letters which are not necessary to be copied. We thank you for the same. We want to draw your attention to a little thing that has come to the attention *to* the writer today, and which we confess we do not
103 like. We refer to a removal from our files of a copy of a letter to you, and the erasure of the page from the index. We can think of no one who would be interested enough in any letter to you to have done this, and circumstantial evidence must directly point to you. The letter is dated April 21st, 1902. We have not looked back in the stenographer's books for a copy of this letter, and we hope you will see fit to send this to us in order to complete our files. We gave you without question the right to look through our correspondence, and this has deeply affected us as a want of good faith on your part. We do not feel as if we care to go on making copies or doing anything towards helping you in this matter when you have apparently seen fit to make a breach of faith with us. We might say

that in making the erasure in the index, the existence of the letter was only partially removed, as our system of cross index on the pages of both our previous letters to you and the one after point both ways to page 121, which contained this letter, under date of April 21st. We have not yet gone through other files to find how many other letters may have been removed; but in view of this we would not be surprised to find that some other correspondence may have disappeared.

Very truly yours,

FABRIKOID COMPANY,
JOHN ASPINWALL,
President."

Mr. BAKER: That is all, Mr. Aspinwall.

Mr. WORTHINGTON: Are you not going to put in the reply he got to that letter?

Mr. BAKER: I thought you asked me not to do it.

Mr. WORTHINGTON: No; I said that would bring me into this, but I did not ask you to put in part of it and not all.

By Mr. BAKER:

Q. Oh, well, did you receive any reply to that letter?
A. I did, sir.
Q. Did you receive any from Mr. Crawford?
A. No, sir.
Q. From whom did you receive a reply?
A. Mr. Worthington, sir.
Q. I will ask you if this is the reply that you received. (Handing paper to witness.)
A. I believe it is, sir.

Mr. WORTHINGTON: I admit that I wrote that letter.

Mr. BAKER: I offer this letter of December 8th, 1903.

The COURT: What is the purpose of that?

Mr. WORTHINGTON: I wrote that as attorney for Mr. Crawford.

The COURT: What is the purpose of this?

Mr. BAKER: What is its relevancy?

The COURT: Yes.

Mr. BAKER: I must admit that I do not see the relevancy of the letter.

The COURT: Well, I will hear from whoever offers the letter, as to its relevancy.

104 Mr. BAKER: I do not desire to offer the letter; I only offered it at the suggestion of Mr. Worthington.

Mr. WORTHINGTON: Well, now, your Honor, I move to strike out the letter which has just been read. I concede, of course, that this transaction is evidence proper to go before a jury. A letter has been read from the witness to Mr. Crawford, calling attention to the disappearance of these papers from his office, which letter could, as I respectfully submit, be of no possible relevancy or pertinency in this case, unless coupled with the answer that might be made to it. It contains statements made by the witness which would

not be evidence for a moment. He has stated what took place, what he wrote to Mr. Crawford or anybody else, I submit, would not be evidence for any purpose; and I did not object to the letter being offered in evidence because I took it for granted that it was going to be connected with Mr. Crawford by showing what answer came to it. Now, I am very anxious, since this letter has been gone into, that the jury should have the whole thing. I was anxious that what followed in the way of correspondence between this Company and Mr. Crawford's counsel should not appear here, for very obvious reasons; but when it has been gone into, I want the whole of it to go in.

The COURT: I cannot see that this letter from Mr. Crawford's counsel should be considered by the jury. The letter written to Mr. Crawford is relevant as tending to prove that he was charged by Mr. Aspinwall with abstracting the letter from the files.

Mr. WORTHINGTON: My point about it, your Honor, is this; If the charge has been made in Mr. Crawford's presence, why, of course, it would have been competent to show his conduct and demeanor. But the charge itself, I submit, would not be competent for any purpose except as connected with what he did; and so when a letter is written to a man which contains statements about something that he is said to have done, I submit it is not competent. Suppose Mr. Crawford had answered that letter and said, "You made a mistake, sir; you authorized me to take away any paper that I wanted;" would it be competent to put in the charge and not put in the denial, your Honor?

The COURT: No; that is just what I was going to say.

Mr. WORTHINGTON: Well, that is exactly what I want to show—that as soon as Mr. Crawford's attention was called to this charge he responded to it, through his counsel; and certainly it would not make any difference, your Honor, whether he made it in person or through his counsel, that he had understood the witness to say he might take away the papers. Can it be said, your Honor, that the charge made to him shall stand, and not the fact of his denial?

Mr. BAKER: If your Honor please, if I might suggest, we offered that letter for the sole purpose of showing that it was brought home to Mr. Crawford's knowledge, the fact that Mr. Aspinwall knew that he had taken these letters away with him; and we do not claim that Mr. Aspinwall can make a charge in that letter that will stand against the defendant at all. But we do claim that we have a right to
105 argue from that letter that Crawford knew, in 1903, that Mr. Aspinwall knew that he had discovered this.

Mr. WORTHINGTON: Well, how it can have any effect upon this case that Mr. Crawford knew that Mr. Aspinwall knew something, your Honor, passes my comprehension. I can see how it might have effect to know that a charge was made against him, and that he did not deny it; and yet here is a charge made against a man, and his denial is to be shut out. Now I respectfully submit, your Honor, that either the charge and the denial should both go in, or they should both go out.

The COURT: The motion to rule out the first letter is overruled.

Mr. WORTHINGTON: Very well. Now, do I understand that you do not offer the letter, the reply?

Mr. BAKER: We do not offer the reply.

Mr. WORTHINGTON: Then your Honor will allow me an exception?

The COURT: Yes.

The following is a copy of said letter:

Ex. 1006.

Telephone Main 178.

A. S. Worthington. John C. Heald. Charles L. Frailey.

Worthington, Heald & Frailey, Attorneys at Law, Columbian Building, 416 Fifth Street, N. W.

WASHINGTON, D. C., *Dec. 8th*, 1903.

John Aspinwall, Esq., President of the Fabrikoid Company, Newburgh, N. Y.

DEAR SIR: My client, Mr. William G. Crawford, has just shown me your letter of yesterday. His letter of December 4th, to which yours is a reply, was written at my suggestion.

Mr. Crawford is more surprised at the contents of your letter than you can be at the discovery that some of the correspondence to which you refer is missing. He understood from what passed between you and him when he saw you in Newburgh last summer that you were perfectly willing that he might take any of the correspondence which would be useful to him in the case against him. I have no idea now that any of this correspondence will be of any use to him or that he will require it at all, but it may be when the trial comes on it will be useful in fixing dates. It was only as a precautionary measure that I advised him to obtain the correspondence in the first place, and to write to you for copies as he did on the 4th instant. Mr. Crawford, with the understanding above referred to, did take from your files several of his letters to your firm. He has them in his possession now. I would like very much to have the originals here, but if you wish to have them returned, he will send them to you at once, and in any event I will ask Mr. Crawford to have copies made and send them to you tomorrow.

Yours very truly, A. S. WORTHINGTON.

106 Thereupon, on cross-examination, the witness, having admitted that he received said letter from Mr. Worthington, counsel for the defendant offered the same in evidence to the jury. To the admission of said letter in evidence counsel for the Government objected, and the Court sustained the objection, stating that the objection was sustained on the ground that the defendant's counsel could offer his evidence when the prosecution had concluded theirs.

Thereupon counsel for the defendant, on further cross-examination

of the witness, asked him whether, after receiving a reply to his letter of December 7th, 1903 to the defendant, he wrote to the firm to which defendant's counsel belonged, another letter, which was exhibited to him, dated December 10th, 1903. The witness having replied that he did write such letter, counsel for the defendant offered it in evidence. The following is a copy thereof:

ASPINWALL CROSS EX. 1.

John Aspinwall, President.

Trade Mark "Fabrikoid."

Cable Address: "Leathpaint."

George H. May, Secretary and Treasurer.

Western Union Code.

Fabrikoid Company.

Main Office and Works, Newburgh, N. Y.

"Better than the Real Hide."

Branch Office, Room 802, 26 Cortlandt St., New York City.

NEWBURGH, N. Y., *Dec. 10th*, 1903.

Messrs. Worthington, Heald & Frailey, #416 Fifth St., N. W., Washington, D. C.

GENTLEMEN: We have your favor of the 8th relative to the mutilation of our records to which we referred in ours of the 4th to Mr. Wm. G. Crawford. The point we raise is not the question of his taking any letters that he may have written to us for use and then to have returned them to us eventually, but the removal from our letter file of a letter of ours to him and the erasure upon the index of the page under which this letter was filed. We did not understand that Mr. Crawford was going to carry away any letters with him. His request to us was that he might make copies of the dates and the tenor of the letters so that should he need them he could obtain either the originals or copies thereof. Now he asks us to have copies made of the correspondence of the Crawford Commission Co. with ourselves and copies of our letters to them. This, you must appreciate,
107 seems a singular request in view of the fact that the Crawford Commission Co. must have both in their files. This, however, is really none of our business and we will let it pass and shall be pleased to make the copies which Mr. Crawford desires if he will send us the original carbon removed from our letter file. The one which we write him about seems to be the only one that is missing. A mere denial on his part that this letter was removed would entirely cover the ground and be satisfactory to us. If he did not remove it

we are unable to appreciate who would have had sufficient interest in the matter to cut it out. It is not a matter of supreme importance to us in any event, except that it is a thing we do no like.

Very truly yours,

FABRIKOID COMPANY.
JOHN ASPINWALL, *President.*

To the introduction in evidence of said letter, counsel for the United States objected. And the Court sustained the objection on the ground that the defendant could not give his evidence at that time.

Thereupon counsel for the defendant duly excepted to the ruling of the Court refusing to allow him to offer in evidence said letter of December 8th, 1903, at that time, and also duly excepted to the refusal of the Court to allow him to offer in evidence at that time said letter from the witness to Worthington, Heald & Frailey.

Thereupon counsel for the defendant asked the witness whether, after he wrote the letter to the defendant complaining of the taking away of letters, he informed the defendant that it would be entirely satisfactory to him in the matter if he, Crawford, would simply write the witness a letter denying that he took the letters.

This question being objected to by counsel for the Government, the Court inquired of counsel for the defendant whether he was asking for the contents of a letter or was referring to a conversation. And counsel for the defendant replied that he had no idea that there was any verbal communication between the parties or anything except what was in the letter.

Thereupon the Court sustained the objection to the question. To which ruling of the Court counsel for the defendant duly excepted.

Whereupon counsel for the Government examined as a witness THOMAS W. MCGREGOR, who testified that in the spring of 1902 he was clerk in charge of the Free Delivery Supplies in the Post Office Department, and his duties were the purchasing and ordering of supplies and to have them sent to postmasters and all correspondence in connection with the supplies; also it was his duty to prepare specifications—that when a contract was about to expire he would call Mr. Machen's attention to the fact that it was time to prepare new specifications, and Machen would tell him to go ahead and prepare them; that he did this in regard to this satchel contract the same as with others; that he prepared the specifications in this case without consulting with anybody, and submitted them to Mr. Machen, who approved them. The witness then identified the bill of the
108 Postal Device & Lock Company for $15,800 for 5000 carrier satchels of Class B in evidence, and said his recollection was that that bill was presented by the Lock and Device Company and was filed by the defendant; that the defendant represented the said company before his office, and that nobody else represented it so far as he knew; that as to the other bills in evidence for $5,481.57, $3,337.02 and $2,374.74, the witness said they were filed in his office, but he had no recollection as to how they got there.

On cross-examination the witness stated that the clause in the specifications for the satchel contract in 1902 which allowed bidders to submit bids for other material than leather, was inserted by him because some months prior thereto a letter had been received by the Postmaster General from some manufacturer in New England that manufactured pegamoid or stuff similar to it, asking that they be given an opportunity to bid; that this letter had been sent to Mr. Machen with a memorandum by either the Postmaster General or the First Assistant Postmaster General, directing that these people be given an opportunity to bid, or to that effect.

Thereupon counsel for the Government proved by WILLIAM H. CORBIN, Secretary and Treasurer of the Wm. H. Wiley & Son Company, that a certain letter dated May 6th, 1902, signed by said company, was sent to the defendant about the time it bears date; and said letter was read in evidence by counsel for the Government, a copy of the same being appended hereto, marked Exhibit O and made a part hereof.

Said Corbin further testified on his direct examination that the cost to the Postal Device & Lock Company of the satchels manufactured by them and supplied to the Government under said contract of June 25th, 1902, including material and labor was, as to satchels of Class A, $1.25, as to Class B, $1.27 and Class C $1.26.

On cross-examination said Corbin testified that when he gave the defendant, in the spring of 1902, his estimates, in evidence, he had been furnished with sample bags and straps, and that the straps turned out to be what are called the Lamb straps, and that he found that his company could not get the Lamb buckle because it was patented. And the witness identified a postal card dated June 30th, 1902, which in that connection he wrote and mailed to said Crawford. Said postal card was read in evidence by counsel for the defendant, and is as follows:

P. D. L. Co. 43-11.

"The Wm. H. Wiley and Son Co., Manufacturers of Overgaiters, Leggins, "Capitol" Wool Soles, Hair Insoles, Military Equipments, etc.

HARTFORD, CONN., *June* 30, '02.

(EX. CRAWFORD, No. 17.)

"Wm. G. Crawford, Hotel Marlborough.

DEAR SIR: We have just learned that it will be impossible to purchase the parts for the strap separate. It is covered by
109 patents and the strap must be purchased complete. We therefore cannot furnish the straps. We learned this since writing you.

Yours respectfully,

THE WM. H. WILEY & SON CO.
W. H. CORBIN."

On further cross-examination the witness stated, with his memory refreshed by said postal card, that it was not until the latter part of June, 1902, that he learned that he could not furnish the straps which were called for by the specifications, and which the defendant had been trying to get his company to make, that he, witness, had numerous interviews prior to that time with the defendant, and that in all such conversations prior to June 30th, 1902, the witness understood from the defendant that the witness' company was to furnish the straps as well as the bags.

Thereupon the witness admitted as genuine his signature to a letter dated May 29th, 1902, of which the following is a copy:

CRAWFORD No. 10.

The Wm. H. Wiley & Son Co., Successors to Wm. H. Riley & Son. Leggins, Over Gaiters, Wool Soles, etc. Hartford, Connecticut (Also Chicago).

Established 1875.

Incorporated 1900.

MAY 29, 1902.

Mr. W. G. Crawford, 930 F St., Washington, D. C.

DEAR SIR:—We are sending you tonight by express the four other bags. The two that are attached to the straps are the two sizes of the leather satchels. The strap arrangement is somewhere near what we would suggest but may need a little modification, which can be done after a conference with you when here next week. Our purpose is to have the weight suspended from the shoulders entirely, and still allow plenty of freedom for action both in walking and in handling the letters to and from the bags. The straps should be crossed at the back when worn but are not crossed in front relying on the front strap to hold them in position.

We had no snap hooks and, therefore, used a haversack hook, which has proved quite satisfactory for Army use.

We shall probably be shut down on Saturday but will open for business on Monday and can make any changes in any way on the bags that you suggest.

We received today another roll of leather cloth from the Paint Co. of a shade between the two styles that we have but thus far have received no direction from you in regard to it.

Yours truly,

THE WM. H. WILEY & SON. CO.
WM. H. CORBIN, *Treas.*

W. H. C.—1.

110 And thereupon Counsel for the defendant offered the same in evidence, and Mr. Baker objected.

The COURT: "You can identify the letter by this witness, and offer it in your case; and then the question of its relevancy will be determined."

Mr. WORTHINGTON: "Well, your Honor sustained the objection to my introducing it at this time."

The COURT: I do not see how I can do otherwise; you can not offer your evidence until the Government closes its case."

Mr. WORTHINGTON: "I would like to have my exception to that, your Honor."

Thereupon the counsel for the Government gave evidence to the jury tending to prove that George E. Lorenz made the following payments to August W. Machen on or about the following dates:

October 27th, 1902	$900.
October 25th, 1902	500.
November 4th, 1902	488.01
December 26th, 1903:	372.34
January 22, 1903	257.42

Thereupon counsel for the Government called as a witness SPENCER TRASK, who testified that he was a capitalist and Banker; that he was connected with the Postal Device and Lock Company, not as an officer, but principally as a creditor and a lender of money; that in the year 1902 Wade Chance was the president of the company; that the defendant became the general manager of the company some time in 1898; and continued to be such general manager down to 1903; that prior to 1902 the business of the Company was mainly by making and introducing a certain combined bag and box called the "Keyless letter box"; that the defendant did pretty much everything in connection with the company; that he represented it here in Washington; that Chance used to sign some checks, and, when witness loaned money to the company, was supposed to sign the checks that paid it out and was supposed to keep general track of the checks and the money; that said Chance was at the same time witness' private secretary; that there had been a constant outlay, witness advancing money for the company, and finally when the defendant asked him if he had any objection to the company getting any other contracts with the Government in case they could be made profitably, witness asked him a few questions about it, to which the defendant answered; and that the witness then said to the defendant that he thought the satchel contract was a good proposition,—that he, witness, was perfectly willing to advance money in carrying out that contract on the chance of a profit, and that he said to the defendant, however, "You settle all those questions with Mr. Chance"; that witness never knew there was a Lorenz—did not remember anything about Lorenz—did not remember the name even until it came up in these investigations; that he never saw the man and did not know anything about him; that some time later the defendant said to him that the company would make a good deal

111 more profit out of the satchel contract than they had expected.

Thereupon on his direct examination witness was asked whether he had any dealing with the defendant in regard to a note of Machen's. Further inquiry on this subject was objected to by counsel for the defendant on the ground that it was not competent for the

Government to show the relations between the defendant and Machen by reference to the particular transaction of the note referred to. But the Court overruled the objection.

To which ruling counsel for the defendant duly excepted.

The witness thereupon further on further direct examination, testified that some months after the defendant entered into the employ of the company he, the witness, for his bank, at the request of the defendant, discounted a note of Machen's for $500, giving the money to the defendant to be sent to Machen. The note was produced by the defendant's counsel, and, subject to the foregoing objection and exception, was offered in evidence by counsel for the Government.

Following is a copy of the same:

EXHIBIT MACHEN NOTE.

$500.00. WASHINGTON, D. C., *June 1st*, 1899.

Ninety days after date I promise to pay to the order of myself five hundred 00/000 dollars at the Second National Bank, Washington, D. C.

(Signed) AUGUST W. MACHEN.

(Five canceled 2-cent internal revenue stamps.)

(Endorsed:) August W. Machen. 1823 C. No such account. Pay to the order of Bank of America. Spencer Trask & Co. The Riggs National Bank, of Washington, D. C., August 30, 1899. Pay the Riggs National Bank, Washington, D. C., or order. The Bank of America, W. M. Bennet, Cashier. The Riggs National Bank, of Washington, D. C., August 31, 1899. 44393. August W. Machen, $500 30th Aug., '99. Sec. Bank.

After detailing his conversation with Crawford about the matter, the witness further said upon his direct examination, "I dismissed it entirely from my mind from that moment and never gave it another thought until my cashier or somebody came and told me that the note had been—well I don't know what happened to it. At any rate, it had been returned. I only know that my cashier came and told me that it had not been paid when the time came. It was a 90 day note, I see. This was in 1899, six years ago, and it is a matter of so small importance to me that I did not give it a second thought. I spoke to Mr. Crawford about it. Mr. Crawford said: "That is all right he will pay it, surely." I said: "Are you sure he will pay the note?" He said "Certainly he will." So I said "You take the note"—I don't remember whether I told him to take it or not, but I simply said: "You see that it is collected
112 as soon as you can; you hurry him up." He said he was hard up, but he would get some money—something—I do not remember that as to the words." That he never saw the note from that day to this, and never heard of it until these investigations

began, when he asked the defendant to send the note to his bank, but that it was never returned.

The witness said on his direct examination that Wade Chance was at present in England, having been there ever since the first trial of this case in June, 1905—that Chance had been engaged in business in London for over two years.

On cross-examination Mr. Trask said that Chance's going away had nothing to do with this investigation, that the witness is interested with Chance in his business there; that when the defendant first became general manager of the Postal Device & Lock Company the office of that company was in No. 11 Broadway, a large building in New York City owned by the witness; that at the same time the Pegamoid Company had an office in that building; that the Pegamoid Company was largely indebted to the witness for rent; that all the officers of the Postal Device & Lock Company in 1902 and 1903, except the defendant, were employees of the witness; that the witness, by reason of his being a large creditor of the Postal Device & Lock Company held it where he could do with it what he pleased; that he left the entire management of the company to the defendant, and gave him an office at No. 11 Broadway, N. Y.; that Chance knew very little about the business of the company; that sometimes when the defendant was in New York he would see Chance and occasionally would see the witness himself; that the witness did not know how much information the defendant gave to Chance about the business of the company and what was going on, except as Chance would occasionally report it to the witness; that witness' time was fully occupied with other matters, and that this was only a side issue and of very little importance; that the defendant would come on often and would wait there for some time to get a talk with the witness, and then witness would say, "I have no time; just talk to Chance"; and some time Chance would come and say, "Mr. Trask, Mr. Crawford has come here"; and witness would say, "Don't bother me about the details, just tell me the substance. Tell me in two words the substance"; and Chance would say, "He said so and so"; and witness would say, "All right, don't bother me any more"; that at the time the contract in evidence with the Government was entered into witness had advanced in the neighborhood of $50,000 to the Postal Device & Lock Company.

On further cross-examination the witness said that he thought the defendant was constantly writing letters to Chance about the business of the Postal Device & Lock Company that a good many of those letters the witness saw—that Chance would bring them to him and sometimes consult him before answering them, that if the fact be that the defendant had written three or four letters in the spring of 1902 to Chance and told him about Lorenz and what he, Crawford, was doing with him, and what Lorenz wanted, &c.,

Chance may have shown those letters to the witness, and he
113 might have read every letter and forgotten about it; that witness does not claim to be a man of large affairs, but does claim to have a very poor memory, but his testimony tended to show that he had a very good memory; that he, witness, might have read

the name of Lorenz a dozen times in these papers and it might have made no impression upon him; that Chance may have brought him the letters from Crawford referring to Lorenz, and showed them to him, and he might have forgotten them; that he did not burden his mind with such things; but left that to Chance and Crawford.

On further cross-examination the witness was asked the following questions:

Q. In order to make this matter clear, here is a letter which I think you will recognize as being in Crawford's writing. (Exhibiting paper to witness.)

A. I do.

Q. And addressed to Mr. Chance, which the Government has offered here, and that Chance received. I want to call your attention to this part of it. It is dated April 29th, 1902: "My dear Chance: My man from the West, (Ohio) an ex-postmaster, has been here and has offered to go in with me on the mail-bag contract I wrote about. I feel that with his experience and knowledge of the matter we will have an excellent chance to secure the contract." Then, a little further on——

A. I remember something like that.

Q. Further on: "I believe that to associate Mr. Lorenz is of great advantage, and that we would not be apt to secure the contract otherwise."

A. Is he the "man from Ohio?"

Q. Yes; he is the man from Ohio.

A. I did not know it.

Q. Can you tell the jury whether or not Chance showed you that letter?

A. I can not.

Q. Have you no recollection that he came and talked to you about Mr. Crawford talking——

A. That is what I said I did.

Q. (Continuing:) About Lorenz.

A. Not about Lorenz, at all. I say I know nothing about it. He speaks of a man from the West.

Q. It says, also: "I believe that to associate Mr. Lorenz is of great advantage, and that we would not be apt to secure the contract"——

A. I do not recall that.

Q. You would not say whether you read that letter, about the time Chance got it?

A. How long ago is that?

Q. That is three years and a half, about. You have forgotten a good many things in the meantime?

A. I have.

The witness then being shown by counsel for the defendant a duplicate of the second Lorenz contract, admitted what purported to be his signature to an endorsement thereon of the following words, "I hereby guarantee payments by the Postal Device & Lock Company

according to the terms and conditions of this contract" was his genuine signature.

The witness was then asked by the Court if the fact that he made such an endorsement necessarily implied that he read it, and he answered, not necessarily, by any means; that he had no
114 doubt that he read it, but the fact of his endorsing a contract of that kind does not necessarily mean that he read it in detail at all.

On further cross-examination, the witness testified as follows:

By Mr. WORTHINGTON:

Q. Now I show you a letter purporting to be signed by Spencer Trask, per H. C. D., dated July 30, 1903, and ask you if that was signed and sent by your clerk or stenographer?

A. (After examming letter.) I would like to have this letter read aloud, if the Court permits.

Q. Well, my question just now is if that is your signature, Mr. Trask. If you say it is, or that it was written by your authority, then I am going to offer it in evidence.

A. You will offer it now?

Mr. WORTHINGTON: I will offer it now; yes sir. It is not customary for lawyers to make bargains with witnesses, but I suppose there is no objection to that.

The WITNESS: Not at all, sir; it simply proves the correctness of my memory.

(The paper above referred to was thereupon marked, by the stenographer, "Exhibit Trask Cross-Ex. No. 101;" and the same is set out on the following page, in full.)

By Mr. WORTHINGTON:

Q. This was sent by your authority, was it, Mr. Trask? That is your signature, by "H. C. D.," I think the initials are?

A. Evidently; I do not remember. That sounds like my letter. It is probable that is mine, to all intents and purposes.

Q. Now, before I offer that, I want to ask you if you remember about this $500 note that you were informed, after you had loaned the money, that the maker of the note wanted an extension?

A. I do not recall that.

Q. And you assented to the extension?

A. What did you say?

Q. And whether you did not assent to the extension, to the time of payment being extended.

A. That would be a very ordinary and customary thing for me to do; if a fellow cannot pay, to tell him to pay when he could.

Thereupon witness admitted that he wrote the letter of July 30, 1903, which counsel for defendant offered in evidence and read to the jury:

TRASK CROSS EX. 101.

"Spencer Trask, New York.

JULY 30, 1903.

DEAR MR. CRAWFORD: I understand through Mr. Hayden that Mr. Worthington told him about that old note of Meachim's, which I had forgotten about until it was recalled to me by you
115 recently. I answered him that some years ago you asked me to loan a friend of yours some money—as a purely personal matter. I agreed to do so, expecting as a matter of course that the note would be paid. The note was presented when due and protested.

At that time you told me that the maker had requested that it should be extended, and that as soon as possible he would fix it up. Since then I have not heard anything further in regard to it, and never have had the note. I do not recall much in regard to it, but my impression is it was simply a loan made by the bank, and the Postal Device Company never had anything to do with it.

I wish you would let me know at once if any entry regarding the note appeared anywhere upon the books of the Company.

Yours truly, SPENCER TRASK,
Per H. C. D.

Wm. G. Crawford, Esq., 1407 F St., Washington City.

(Mr. Trask had to hurry off and could not wait to sign.)

Witness further testified:

"Q. Mr. Trask, during the time that Mr. Crawford was actively engaged in representing your Company, did you know that he was receiving various commissions on matters connected with the business of the Company, besides his salary?

(Objected to, and objection withdrawn.)

"A. I supposed that he was. I remember that he told me of one arrangement that he had made with some lawyer here.

"Q. A Mr. Polk?

A. Mr. Polk, yes, by which he was to have a share in certain profits in the business. He had a desk in his office, I think he told me; I do not remember the details at all.

"Q. And do you remember that he was to divide the commission he would receive in that way on his business with Polk with your Company?—with the Postal Device and Lock Company, I mean?

A. That he was to do what?

"Q. That he was to divide with the Postal Device and Lock Company the commissions which he was to receive from Polk on business with Polk?

A. Well, it is possible; I do not recall the particular details of the arrangement. I only know that he wrote me asking if I had any objections to his making some arrangement with this Polk, and I said, 'Why, No'; but as to the details——

"Q. You do not recollect that it was a part of the arrangement that he was to divide with the Company?

A. No. It is possible that it may have been; I do not recall the matter at all.

On redirect examination counsel for the Government, having stated that the matter was overlooked on the direct examination, the witness was asked the following question by counsel for the Government:

Q. I will ask you whether or not Crawford ever told you
116 that under this contract he was receiving money from Lorenz or the man from Ohio?

And the witness answered: "Certainly not; absolutely not."

Q. Now, did you hear of the investigation in the Post Office Department?

A. Did I? Certainly.

Q. Did you have a conversation with Mr. Crawford after that?

A. Yes; certainly I did.

Q. Did he in that conversation tell you that he was receiving any money from any one under this contract?

A. That he personally was receiving any money?

Q. Yes, under this contract?

A. No, sir; not at all.

Q. Or had received any money?

A. Not once; he did not. May I——

Q. Is it an unusual thing for you to guarantee a contract?

The COURT: Just a moment.

A. I was trying to recall, when you asked——

Mr. WORTHINGTON: Just one moment, please. Your Honor, is that competent? What have we got to do with what——

The COURT: Well, I thought Mr. Trask was reflecting, and wanted perhaps to make some other reply to the first question.

Mr. WORTHINGTON: Oh!

The WITNESS: You were perfectly correct in that, Judge. I was trying.

The COURT: Well, take your time.

The WITNESS: That is rather a difficult thing; when you asked me when my attention was first called to these things, as a matter of course it came as a great shock and surprise to me that there should have been any irregularity whatever in anything——

Mr. WORTHINGTON: Now then, one moment, your Honor; I move to strike out that sentence. The operations of his intellect have nothing to do with this case.

The COURT: Yes; that is hardly responsive to the question.

The WITNESS: All right; I was getting at it in a roundabout way.

By Mr. BAKER:

Q. Just tell us what happened, Mr. Trask.

A. I think that I sent for Mr. Crawford to come, and asked him to explain to me what all this meant, what this investigation meant.

He came, and he made some explanation. Now, if you will ask me what that explanation was, why, it would be impossible for me to tell, because that was two years ago or more. At that time, and subsequently, as I began to learn more from the inspector, from the lawyer, from all these other things, I can not discriminate just at this moment between exactly what he told me and what I learned in other ways. I can not tell how the information came to me, whether it came directly from Mr. Crawford, whether it came from inference, or came from these other things. So when you ask me whether he told me—he certainly never told me that there had been any irregularity upon his part; he certainly denied that there was any reason whatever for anything; and when I asked him distinctly, "Crawford, is there anything here in connection with this matter that is going to justify the suspicions that have been men-
117 tioned to me by the inspectors?" he absolutely denied that. That is all that I can say to that.

On further redirect examination the witness was asked by counsel for the Government if he asked the defendant for the books of the company. He replied that he did ask the defendant for the books of the company and also for the papers, and that he never got them; that he, witness did not know whether there were any books and papers belonging to the company, but that he knew there should have been—that he knew and had every reason to suppose that the defendant as the manager was keeping books.

On recross examination Mr. Trask testified that Mr. Chance, as president, secretary and treasurer of the company must have kept some books if he performed his duty; that the witness had asked Crawford for the books of the Company and wrote to him several times for the books and papers, but never got them. At this point counsel for the defendant stated: "as a matter of fact, no books were kept." That whatever books they had the Government had seen; that he, witness, supposed that Mr. Crawford had kept most of the books; that after these things came out when witness requested from the defendant time and time again books that the Government wanted, books that witness wanted to confirm certain things even in regard to the company's stock-holders, nothing could be found—that witness tried in every way to get possession of something like that and knows that whatever few things the company had were submitted to the Government—that witness knew that they could not get books which it was supposed and Mr. Chance supposed and they all supposed that the defendant had; that witness does not know as a matter of fact whether any books were kept by Chance or by Crawford or by anybody else—that witness had a recollection of having seen some kind of books. What was done with them he does not know; that witness remembered the defendant coming over to New York and submitting to Chance or to the witness or to both, little books in which he kept an account of the moneys he had received and how he had expended them; that witness saw those books at the time but did not examine them specially; that witness's recollection is that the books were then in the defendant's custody, and he did not remember whether or not Mr. Chance was present, and did not remember

whether they came to him directly from Crawford or through Chance. That he did not remember anything about it excepting he remembered that there was some little books brought there once with the request that witness should see some books or something or other —some books were shown; that whether these books came to witness directly from the defendant or through Chance, or whether they were retained there, or whether witness saw them, he had no recollection—he only remembered something like that; that witness could not in anywise fix the date approximately or otherwise of that transaction.

On further re-cross examination the witness, being asked by counsel for the defendant whether there was any understanding between him and the defendant that the defendant should have the right to receive compensation in the nature of commissions growing
118 out of business he transacted in Washington for the company, said that there was absolutely no such understanding except in one or two cases; that one of those cases related to a commission which the defendant was to receive from the Fabrikoid Company through a company called The Crawford Commission Company, of which he was a member, and that the commission thus to be received by the defendant from the Fabrikoid Company was to be divided between the Postal Device and Lock Company and himself; that the other case related to the arrangement between the Postal Device and Lock Company and the defendant in reference to fees to be received from Mr. Polk.

By Mr. BAKER:

Q. "I will ask you whether or not Crawford ever told you that under this contract he was receiving money from Lorenz, or the man from the West?"

The WITNESS:

A. "Certainly not; absolutely not."

Q. "Did you have a conversation with Mr. Crawford after you heard of the investigation in the Post Office Department?"

A. "Yes; certainly I did."

Q. "Did he in that conversation tell you that he was receiving any money from any one under this contract?"

A. "That he personally was receiving any money?"

Q. "Yes, under this contract."

A. "No, sir; not at all."

Q. "Or had received any money?"

A. "Not once; he did not."

The witness further testified that he had sent for Crawford to come, and had asked him to explain what the investigation meant; that on April 1st, 1902, in reference to that matter the defendant wrote to Chance, as follows:

CRAWFORD 102.

Postal Device & Lock Company, Bowling Green Offices,
11 Broadway.

WASHINGTON, D. C., *April 1st*, 1902.

MY DEAR CHANCE: Mr. Polk, who as you know, who has done work for the Postal Device Co. is employed by a patent attorney here to superintend his work and prepare certain cases, reserving the privilege of doing other work. He is also legal Sec't'y for a Congressman, attends to patent and other work on his own account and is a bright and capable fellow. As long as I have Postal Device Co. business to give Mr. Polk I can make office accommodations out of him, but I want to form a partnership with him as I can share in the profits of the business I bring, without being compelled to give any time to the same. In this way I could share in the profits from Postal Device Co. business and would be enabled to turn over to the Postal Device Company 40% of the net profits arising from their business—this would amount to giving the Company the benefit of lower rates for their work.

119 Mr. Polk's first work for the Co. was done last year and I have had the benefit of office accommodations at his expense since last summer and have kept Postal Device Co. samples and transacted Co. business there with an understanding that if I could bring other business we would enter into partnership.

I would be liable for part of the expenses of a partnership but hope with an associate who can handle business without my help to be able to take up business I would be unable to do now on account of my attention to Postal Device Co. matters, uncertainty of movements and lack of experience and practice sufficient to dispose of such business unassisted.

Mr. Polk thinks he sees an opportunity for additional legal work from the Postal Device Co. and is willing to take chances on getting other business through my acquaintances' connections. He has everything to gain nothing to loose. He has agreed in event of partnership to allow me 40% of the net profit on his retainer fee of $150 from Postal Device Co. in Register case—as well as on all other Postal Device Co. business from date, excepting in any additional fee which may become due in the Register case, in event of winning same. I calculate that the saving to the Postal Device Co. on account of Mr. Polk's retainer of $150 above referred to will amount to between 40 and 50 dollars.

I have decided to sign partnership agreement with Mr. Polk if there is no hitch, as soon as some details have been discussed and agreed upon. I will be glad in order to build up a business and in view of my present employment by Mr. Trask with 40% of the net profits of the firm derived from Postal Device Co. business and any other business referred, or brought to my attention by him.

I beg that you will explain this suggestion from me to Mr. Trask as intended to show my appreciation of his favor and in view of a recent conversation with you.

Your very truly, WM. G. CRAWFORD.

The above is the plan I wrote you of on 30th ultimo by which I can save the Postal Device Co. some money.

That six days afterward Chance wrote to the defendant saying, "Mr. Trask made no objection to the plan you suggested concerning Mr. Polk, but hardly thought it would amount to much."

At this point, by consent of counsel on both sides, the following letter from Arthur T. Brice, of Riggs National Bank, was read in evidence to the jury:

The Riggs National Bank of Washington, D. C.
(Formerly Riggs and Company.)

WASHINGTON, D. *D., June* 7, 1905.

A. S. Worthington, Esq., Washington, D. C.

DEAR SIR: Replying to your verbal inquiry, we beg to say that the records of this bank show that on August 30, 1899, a note of August W. Machen for $500 payable to his order, dated June
120 1, 1899, payable 90 days after date at the Second National Bank of Washington, D. C., was by this bank duly presented for payment to the Second National Bank aforesaid and duly protested for non-payment. This note was received by us for collection for account of the Bank of America, New York, and upon non-payment was returned by us to them.

Very truly yours,

ARTHUR T. BRICE, *Cashier.*

The counsel for the Government thereupon called as a witness JOHN B. SULLIVAN who testified that he is a Post Office Inspector, and that the defendant on or about the 28th day of May, 1903, at the Post Office building in New York City made a statement to the witness and to Post Office Inspector R. D. Simmons, which was reduced to writing by him or by one of them and re-written the next day on typewriter & submitted to Mr. Crawford who made changes in it in pencil. And said statement was thereupon read in evidence to the jury by counsel for the Government. A copy thereof is hereto appended, marked Exhibit P and made part hereof.

On cross-examination the witness stated that he and Inspector Simmons met the defendant at the Brevoort-Lafayette Hotel in New York City about 5 o'clock on the afternoon of the date the statement was made; that they told the defendant they wished to have a talk with him about this satchel contract, and asked him to come down to the Post Office that evening to answer questions about it; that the distance from that hotel to the City Post Office in New York is about two miles; that the defendant told them that he had an engagement that evening but that he would break it and would meet them at 8 o'clock as requested, and that he did so.

Thereupon counsel for the Government called JOHN B. SLEMAN, who testified that he is chief clerk in the office of the Auditor of the Post Office Department; that he has been in the Post Office Department thirty-five years and also knows August W. Machen; that he had seen said Machen in the defendant's room at different times between 1893 and 1897.

Thereupon the counsel for the Government called as a witness EARNEST A. CHERRY, who testified that he is a laborer in the Auditor's

Office of the Post Office Department; that he had been in the Post Office Department since May 4th, 1897, and knew the defendant, and also knew August W. Machen; that he had seen said Machen in the office of the defendant frequently in 1895; that they would sometimes go out together about lunch time and that sometimes the defendant would say they were going to lunch.

121 Thereupon counsel for the Government proved by J. L. BRISTOW, Fourth Assistant Postmaster General, that the following letter, dated May 14th, 1903, was signed by the witness as Fourth Assistant Postmaster General and mailed to the Postal Device & Lock Company about the time of its date:

(Illegible initials in corner). (400)
In your reply please refer to initial and number. P. D. C. 43-12

FS-2466-R
POST OFFICE DEPARTMENT,
FOURTH ASSISTANT POSTMASTER GENERAL,
OFFICE GENL. SUPT. FREE-DELIVERY SYSTEM,
(Crawford 103) WASHINGTON, *May* 14, 1903.

The Postal Device and Lock Company, #11 Broadway, New York, N. Y.

GENTLEMEN: Confirming my telegram of the 13th inst., and in explanation thereof, I have to advise you that the exhausted state of the appropriation for the current fiscal year renders it necessary to cancel all orders for carriers' satchels which have not been executed.

Under cover of enclosed official envelope, kindly return all unfilled orders for carriers' satchels, and oblige,

Very respectfully, J. L. BRISTOW,
Enclosure. *Fourth Ass't P. M. General.*
M. C. F."

On cross-examination Mr. Bristow admitted that he also signed and sent the following letter, dated May 23rd, 1903, which was read in evidence to the jury by counsel for the defendant:

"MAY 23, 1903.

The Postal Device & Lock Company, New York, N. Y.

GENTLEMEN: Kindly render at once bills for carriers' satchels shipped on orders of the Department for which the Department is still indebted to you.

Very respectfully, J. L. BRISTOW,
Fourth Ass't P. M. General.
M. C. F.

Thereupon counsel for the Government produced what purported to be a stenographic report of an examination of the defendant taken in the Post Office Department in Washington, D. C. on the 29th day of May, 1903. It was admitted by counsel for the defendant that the report was accurate, and the same was thereupon read in evidence by counsel for the Government to the jury. A copy of the same is hereto appended marked Exhibit Q and made part hereof.

Thereupon counsel for the Government called as a witness GEORGE E. LORENZ, who testified that he is a defendant in the two conspiracy indictments on trial; that he was then serving in the Moundsville Penitentiary a sentence from this Court; that he was in Washington, D. C. stopping at the Raleigh Hotel on April 15th, 16th
122 and 17th, 1902, and then went to New York; that he returned to Washington on the 3rd of June at the suggestion of August W. Machen; that whether that suggestion was made by letter or telegram he can not just tell, having examined his papers and being unable to find any such message; that he first met the defendant on June 4th, the day following his arrival; that on that occasion he met the defendant at the defendant's office and met him quite often on that trip; that he, witness, saw Mr. Machen at the Raleigh on the evening of his arrival, June 3rd; that on June 4th or June 5th, or on both those days he saw the defendant and Machen together.

The witness was then shown the first Lorenz contract and admitted the genuineness of his signature thereto. He was then asked by counsel for the Government if he had any agreement as to the division of the compensation which he was to receive under that contract, and he replied that he did—that his agreement in that regard was with the defendant and Machen; that the agreement he had with the defendant was that he, witness, should have one-fourth of the profit, the defendant one-fourth, and Machen one-half; that Machen and the witness, however, had an agreement by which what Machen and he got together—the three-fourths—should be divided equally between them; that in making the contract with the defendant it was said that Machen was to receive one-half.

On further direct examination Lorenz testified that he received the letter of September 25th, 1902, in evidence, and that the second Lorenz contract was enclosed therein; that the contract was not signed by the witness when he so received it; that he was not clear whether he received one or two copies of that contract, but that whatever he received he signed in the presence of two witnesses and returned the same to the defendant.

On further direct examination the witness testified that he received from the defendant the letter of October 22nd, 1902, in evidence; that in the letter when he so received it was a draft for $5,441.35 and a memorandum which he had returned to the defendant, but that before returning the memorandum he made a copy thereof on the original letter almost immediately after he received it; that the memorandum in his handwriting on said letter of October 22nd, 1902, in evidence was the copy which he so made of the memorandum which defendant had sent to him; that the original memorandum was in the defendant's handwriting.

Thereupon the following proceedings were had:

Mr. WORTHINGTON: Mr. Baker, kindly call attention to the fact that you have laid the foundation for producing the copy.

Mr. BAKER: Yes, I have given notice to produce it.

Mr. WORTHINGTON: We acknowledge the receipt of the notice to produce said memorandum, and our reply is that we have not it, and never had it."

The witness, resuming, stated that the words underscored in said copy of said memorandum, were underscored in the original.

123 Thereupon the counsel for the Government read in evidence to the jury said copy of said alleged memorandum the same being as follows

"Copy of Original Mem.

Check $5441.35			
140.			To pay our friends on a/c (will explain to you)
2) $5301.35			
AW.....	2650.65		
Geo.....	1325.30	1325.30	
		140.	
Bill.....	1325.30	1465.30	

Please send the $1465.30 by Cashier's N. Y. to *order Bearer* by *registered* mail to me & I will pay. The 2650 send direct. Kindly send *back this original memorandum* as I need it here to explain figures."

The witness, resuming, stated that said draft for $5,441.35 was deposited by him in the Home Savings Bank of Toledo to the credit of his wife, Martha J. Lorenz, and that he drew out on the same day, October 24th, 1900, $1,800 in currency, and deposited it in the National Bank of Commerce in Toledo; that then he drew a check on the National Bank of Commerce for $1,465.34 with which he purchased the bearer draft for that amount in evidence.

On further direct examination said Lorenz testified that the several payments hereinbefore referred to, made by him to Machen, of $900 on October 27th, 1902, $500 on October 25th, 1902, and $448.01 on November 4th, 1902, were made on account of Machen's share of said sum of $5,441.35; that the payment made by him to said Machen on or about December 26th, 1902, of $372.34 was Machen's share of the $992.90 received by the witness from the Postal Device & Lock Company on or about December 22nd, 1902; that the payment of $257.42 made by the witness to said Machen on or about January 22nd, 1903, was said Machen's share of the $686.46 received by the witness from the Postal Device & Lock Company on or about January 17th, 1903.

On further direct examination the witness testified that the bearer draft for $1,465.34, which was sent by him to the defendant, was sent pursuant to the arrangement made with the defendant in Washington in June, 1902, and was made payable to bearer in accordance with the said memorandum received by the witness from the defendant in the defendant's said letter of October 22nd, 1902; that when the witness received from the defendant the check of the Postal Device & Lock Company dated December 22nd, 1902, for $992.90, there was pinned to the letter enclosing that check a type-

written memorandum reading "Send by express"; that in
124 accordance with this direction he sent to said Crawford by Adams Express, on the 24th day of December, 1902, in cash, $248.23; that when the witness received from the defendant the check of the Postal Device & Lock Company, dated January 17th, 1903, for $686.46 there was pinned to the letter enclosing said check a typewritten memorandum reading "Send New York Exchange"; that in accordance with such direction he sent to the defendant the check dated January 22nd, 1903, for $171.62.

On cross-examination said Lorenz testified that he is the George E. Lorenz referred to in an indictment mentioned in a book of the Supreme Court of the District of Columbia, which was produced and exhibited to him, against George E. Lorenz, August W. Machen, Martha J. Lorenz, Diller B. Groff and Samuel A. Groff; that he is the person of that name who was convicted in that case and sentenced on the 27th of February, 1904, to be imprisoned in the Penitentiary for two years; that although the mandate of the Court of Appeals confirming that sentence and judgment came down on the 7th of February, 1905, the witness did not in fact go to the Penitentiary until July 4th, 1905; that during most of that interval the witness was in Toledo, and the rest of the time in Washington; that he came to Washington about the time his case was called for trial at the former trial; that prior to that time he had gone to the office of the District Attorney and made a statement about this matter; that this occurred, according to witness' recollection, while his case was pending in the Supreme Court of the United States and before that Court had rendered its opinion; that he was not subpœnaed to go to the office of the District Attorney, but *when* there voluntarily; that he is aware of the fact that there are two indictments on file in this Court charging the defendant Crawford and himself and Machen with conspiracy in regard to the satchel contract, but that he understood that one of them was withdrawn; that he did not remember who told him that; that his impression was that there was only one indictment against him; that he did not know that there was one pending against his wife charging her with conspiracy with himself, Crawford and Machen; that he may have been informed of that but he thought that was all withdrawn; that he has never pleaded to it, and neither has his wife so far as he knows; that besides being sentenced to the Penitentiary in the case referred to, he had been sentenced to pay a fine of $10,000; that he had acquired some real estate in Toledo but that he had never paid the fine, nor any part of it and had never been called upon to do so.

On further cross-examination said Lorenz testified that when he was in Washington at the Raleigh Hotel on the 16th, 17th and 18th of April, 1902, he was here on the business of organizing a mining company with Machen and five or six other persons whose names he cannot recall; that he saw the other persons at Machen's office but they were strangers to him; that he did not remember the name of the company, but it was a company for the purpose of carrying on the business of mining copper somewhere in Mexico—that he thinks

it was the Capital City Mining Company; that he was not in
125 Washington after his visit to Washington about the middle of April, until the 3 d of June following; that he can not say whether he saw the defendant on that April trip or not, but that he is quite positive that he did not have any conversation with the defendant about the first Lorenz contract before he, witness, came here on the 3rd of June and saw the defendant and executed that contract on the next day; that to the best of his recollection that contract had been drawn up and executed by the Postal Device & Lock Company without his having any communication with the defendant or the company in regard to it; that it was first submitted to him for signature after it was fully prepared, and that he had no conversation either with the defendant or with Mr. Polk about it before it was prepared.

On further cross-examination, the attention of the witness having been called to the fact that the three payments of $500, $900 and $488.01 made by him to Machen in October and November, 1902, were less by $100 than said Machen's share of the draft for $5,441.35, the witness said that the balance of that amount was sent to him in another way; that he had other business transactions with Machen during those months, that he owed Machen a debt that he was paying on—a note he owed Machen—a $25,000 note on the oil business, and that he was making payments to Machen about that time on account of the oil business; that it was not a fact that instead of paying Machen money on account of the oil business he was paying him a dividend on some moneys he, Lorenz, was receiving from another contract with the Post Office Department; that as the witness understood the question he was not paying Machen about the same time a certain proportion of moneys which he, witness, was receiving from the Groffs under a contract they had with the Department; that along about those months he was receiving from the Groffs certain moneys from time to time, and paying an exact proportion of those moneys over to Machen about the time he received them from the Groffs.

On further cross-examination said Lorenz testified that he was with the defendant at Hartford for a part of a day shortly before September 25th, 1902; that at that time the defendant asked him, Lorenz, to acquiesce in the second Lorenz contract; that that was the first time that the subject of the second Lorenz contract had been broached between the witness and the defendant; that the witness thought that prior to that time he had not had any conversation with Mr. Polk or in Mr. Polk's presence in reference to a new contract; that he, witness, is clear and positive that he had not agreed with the defendant, after the bids had been put in in June, 1903, and before the contract was awarded to the Postal Device & Lock Company that a new contract should be entered into to take the place of the first Lorenz contract; that when he met the defendant at Hartford in September there was some talk between them about deductions that were to be made, and that at that time the defendant asked the witness to consent to certain modifications of the first Lorenz contract, and that he, witness, agreed to those modifications, "because he and Mr.

Machen had agreed to it first and wanted my consent;" that
126 the defendant told him that, and he did not remember whether Machen told him or not; that there was nothing said between witness and the defendant at Hartford in September about deductions on account of straps—deductions from anybody; that that subject was not mentioned.

On further cross-examination said Lorenz testified that what he had testified to on his direct examination as to the arrangement made with the defendant concerning the distribution of the money which he, witness, was to receive from the Postal Device & Lock Company, was the whole of the arrangement between him and the defendant, and that he did not at any other time have any other arrangement with the defendant in reference to the distribution of the money; that about the time the first Lorenz contract was signed either the witness or Machen suggested to the defendant that a man named Quinn in Toledo who had manufactured mail bags for the Government, might be a good person to see in regard to manufacturing satchels for the Postal Device & Lock Company; that there was a firm named Hettrick Brothers in Toledo that manufactured awnings and canvas goods; that Quinn made leather collars; that witness was to see Quinn and see at what figure he would do the work of manufacturing satchels; that he, witness, complied with his promise in that regard and saw Mr. Quinn; that he, witness, was to render service as one of the partners in this business of trying to get a man to manufacture the bags if the contract should be awarded to the Postal Device & Lock Company; that the defendant sent him a sample bag, and that he went to see Quinn in accordance with the promise he had made to the defendant; that Quinn would not listen to it, having no facilities for doing the work.

Thereupon the witness testified that a letter which was shown him on cross-examination, dated July 14th, 1902, purporting to be signed by him and to be addresed to the defendant, was written by him and sent to the defendant about the time it bears date. Said letter was read in evidence to the jury by counsel for the defendant, and the following is a copy thereof:

TOLEDO, OHIO, *July 14th*, 1902.

Mr. William G. Crawford.

DEAR SIR: I saw Hettrick Brothers this morning to get figures and found that Mr. H. who does the figuring off on his vacation and will not be back until August 1st. I do not think you want to wait so I will return the package by express. If you want their figures on his return let me have the satchel again and I will see him.

GEORGE C. LORENZ.

On further cross-examination said Lorenz further testified that the satchel referred to in the letter had been sent to him in accordance with the understanding that he should see Quinn; that he did not think Hettrick's name was mentioned, but that was probably witness' own suggestion afterwards; and the reason it escaped his mind was that he did not see Hettrick at all; that before writing said letter he

had gone to see Hettrick Brothers for the purpose of seeing if
127 they would give him figures and if they would manufacture the bags, but he did not see Hettrick; that he went to see Hettrick Brothers in good faith to try to get a manufacturer in Toledo to make these bags, that he went to two of them; that Quinn would not do it and Hettrick was away.

On further cross-examination said Lorenz testified that he did not agree with the defendant that he would use his Lorenz's influence to get Machen to have this contract awarded to the Postal Device & Lock Company; and that he did not make any suggestion to the defendant, and the defendant did not make any suggestion to him; that he, Lorenz, was brought into this matter for the purpose of influencing Machen; that, as he understood, Machen and the defendant had it all fixed up before he, witness, came to Washington, and that he was brought in as a third party to use his name; that he did not at any time have any talk either with Machen or the defendant or with his, witness's wife, in regard to not furnishing straps, or indicating that straps were not to be furnished by the contractor; that the witness had nothing to do with that fact, that while it appeared that the Government did furnish the straps and that the contractor did not, that witness did not have anything to do with that and was sure that his wife did not have anything to do with it, and that the witness had no knowledge at all that the defendant had anything to do with it.

On further cross-examination, the witness, being asked whether he had ever sent Machen the $100 which was necessary, with the $900, $500 and the $488.01 to make up what was due Machen out of the $5,441.35 payment, said he did not know how that was settled.

The witness was then shown by counsel for the defendant a certain memorandum containing some writing and figures in ink and above the ink part of the writing some figures in pencil, and he testified that all the writing on the paper, both in ink and in pencil was in his handwriting; that he had no recollection as to when it was that he made the pencil memorandum above the ink entries on the paper, or the circumstances under which he made it, or why he made it. He was then shown by counsel for the defendant a letter dated July, 10th, which he said was received by him from the defendant in July, 1902. The following is a copy of said letter:

"930 F St., *July 10th.*

Mr. Geo. E. Lorenz, 1903 Madison Ave., Toledo.

My Dear Sir: I sent you by express today a sample bag. I find the hand sewed cost more money. You remember our figures were based on machine sewed but it is doubtful whether that would be satisfactory.

"In a quiet way find out prices for making up bag as per sample. You will know how to go about it. I want cost outside material in bag proper (Pegamoid) which we will furnish. Send me memo. statement of your understanding of cost and profit remaining to you. Something separate which can be kept as memo. The Co. think they

ought to get 25¢ bag on ducks which were lost by high bids? What say you?

128 Do not worry at all there will be a margin, but I would like to know how well you can do in the matter if you can get figures at all. Return sample earliest opportunity.

Yours truly, W. G. CRAWFORD."

After reading the said letter the witness said that he and the defendant had some joint figures and that the memorandum in question is a copy of them, that those were figures furnished to him by the defendant, that he, witness, did not get at the figures at all and did not know anything about them, but that they were copied from the defendant's own memorandum at their meeting in Washington in June, 1902; that he copied them so as to have them just for reference and because he was an interested party in the contract, and that the memorandum in question is the one referred to in said letter of July 10th as a memorandum statement of cost and profit remaining to witness. Said memorandum, which the witness testified aforesaid was entirely in his handwriting, is in the words and figures, following:

(Here follows fac-simile marked p. 128 *a*.)

1282

GEORGE LORENZ & CO.

MANUFACTURERS & IMPORTERS

PERFUMERS.

Toledo, Ohio, 190

	Class A.		Class B.		Class C.	
Leather						
Paperboard	.91		1.12		.98	
Rings	.01	.01	.01	.01	.01	.01
Buckle for Hat						
Rivets						
Cutting						
Stitching	.09	.36	.09	.36	.16	.90
Leather Trimming	.13		.13		.13	
Stamp U.S.M.	.01	.01	.01	.01	—	—
Total cost Bag	1.19	2.42	1.40	3.03		
" " Frame					.20	.20
Cost Mfg	.20		.24		.30	
P.R.R. Co	.25		.25		.25	
	1.64		1.89			

55R

Witness was then shown by counsel for the defendant the following letter, which he said was in his handwriting and which counsel for the defendant read in evidence to the jury:

"1903 MADISON STREET, *October 25th*, '02.

W. G. Crawford, Esq., Washington, D. C.

DEAR SIR: I wish to acknowledge rec't of your favor of the 22nd with check enclosed for $5,441.35, which I have credited the Postal Device & Lock Company on order for 5000 lot.

Very truly, GEORGE E. LORENZ."

Counsel for the defendant then showed the witness two carbon copies of a statement dated October 21st, 1902, which papers were afterwards offered in evidence, and are hereinbelow copied in full, and asked whether he did not receive them with the defendant's letter of October 27th, 1902, and whether he did not return them to the defendant unsigned, and the witness said that his best recollection was that he never received said papers.

On further cross-examination said Lorenz testified that when he met the defendant in Hartford in September, 1902 the defendant told him that the Postal Device & Lock Company were dissatisfied with the division of profits between them and "our company" (meaning Machen, Lorenz and Crawford); that the defendant further said at that time that the Postal Device & Lock Company had found out from the actual cost of things that "'we" were getting too much and

129 "that the object of this new contract was that we should have deducted from our profits an amount equal to the cost of straps;" that "there was nothing about furnishing straps or anything but an amount equal to the amount of straps was to be deducted from our profits;" that he, Lorenz took it to be that the deduction was what it was going to cost the company to make the straps.

The cross-examination of the witness then continued, as follows:

Q. Well, now, Mr. Lorenz, I want to know what you recollect about it.

A. Well it was——

Q. I am only inquiring about that.

A. It was to be the cost of the straps; we never had a settlement, so that I do not know exactly what his interpretation of that would be.

Q. You say you never had a settlement?

A. Not in that.

Q. Well, why did you not have a settlement?

A. Because it never came up.

Q. There was a settlement to be made, then, in the future, was there?

A. Yes, sir; as I understood it.

Q. What was that settlement? Just state exactly what that settlement was to be.

A. That the cost of the straps was to be taken from us.

Q. Well, now, was that to be taken away before the remittances were made by you, or was it to be made at some future time when the account was to be settled up?

A. I did not know about that.

Q. What is that?

A. I did not know about that; I did not understand anything about that. There was to be an adjustment.

Q. There was to be an adjustment as between the Postal Device and Lock Company and you as to the amounts that you were to get?

A. Yes, sir; when we found what the cost of the straps would be.

Q. When you found the cost of the straps, then, it was to be charged to the amount which was to go to you under this contract between you and the Postal Company?

A. Yes, sir.

On further cross-examination said LORENZ testified that at Hartford in September, 1902, the defendant told him that Machen had required a strap that would be more expensive than the strap the specifications of the contract called for, and that at that time the defendant told him, as a reason for giving the manufacture of the straps to him, Lorenz, that he, Lorenz, would get an adjustment, because they could not expect him to furnish anything more than was called for in the specifications.

On further cross-examination of the witness in reference to the $100 shortage in the payments made by the witness to Machen out of the $5,441.35 received by him from the Postal Device & Lock Company in October, 1902, the Court directed that a blackboard should be brought in, which was done.

And thereupon on further examination by counsel for the Government the witness testified that about the time he received the $5,441.35 from the Postal Device & Lock Company he received two payments from the Groffs of $2,500 each, one-half of which payments he turned over to Machen; that about that time, besides making to Machen the aforesaid payments of $900, $500
130 and $448.01, he made other payments to Machen of $1,800 and $800; that these payments altogether amounted to $4,388.01, being the exact amount due Machen, allowing him one-half of the $5,000 received from the Groffs and 37 1/2 per cent. of said sum of $5,441.35, less $140., and the witness identified and counsel for the Government read in evidence to the jury the instruments representing said payments of $1,800 and $800, respectively, the payment of $1,800 being a draft drawn on the witness by Machen dated October 30th, 1902, and the payment of $800 being represented by a draft dated November 4th, 1902, payable to the order of the witness and endorsed over to Machen by him.

The cross-examination of the witness being resumed, he testified that when he received from the defendant the letter of September 25th, 1902, enclosing the second Lorenz contract and asking him to take note that the amounts allowed him for straps and profit were 45, 1.19 & 84, he understood that to mean that that was the same amount of profit that "we" had figured on the first Lorenz contract;

and that when the second Lorenz contract was entered into the witness understood that the amount paid for the straps was to be taken off of that—that he was to get forty-five cents on Class A, $1.19 on Class B, eighty-four cents on Class C, and that the cost of the straps was to be deducted from that.

On further cross-examination the witness stated that he remembered a talk that he had with Mr. Polk during the Groff trial at Polk's office, but he did not remember seeing him in Judiciary Square in Washington. The witness was then asked the following question by counsel for the defendant: "Did you not in the fall of the year 1903, in Judiciary Square, say to Mr. Polk in substance that you had found, that you had discovered that the straps for the 5,000 bags at twenty-nine and a half cents would amount to almost if not exactly what you had sent back to Crawford of the $5,441.35, and say further to Mr. Polk in substance that it would be well for Crawford to testify at the trial that that $1,465 and some cents was sent back to him, as repayment for the straps, as a payment on account of the straps for those 5000 bags?" and the witness answered he did not. Being then asked by counsel for the defendant whether he said anything on that subject to Mr. Polk, the witness said he may have said something on that subject but did not remember what it was. He was then asked whether he did not at the former trial of the defendant, testify as follows:

"Q. Well now, do you not understand that I am asking you what you said to Mr. Polk?

A. Well, yes, sir; I do.

"Q. I think you ought to. Tell us what suggestion you made to Mr. Polk about what Mr. Crawford should testify to.

A. The suggestion that I made was that there was a coincidence in these figures here that might be used in defense, if we had to defend ourselves on that point. That was this: That the expenses deducted from the first remittance that I sent to Mr. Crawford, would almost exactly, within a dollar and a few cents, make up the amount of the price of the 5,000 straps at 29½ cents, I think; at least the price they were supposed to cost us.

131 "Q. That comes out very close I see.

A. I think within a dollar or two.

"Q. Tell the jury in full what suggestion you made to Mr. Polk about that?

A. That was the suggestion, that there was a coincidence that might be used in case a person wanted to prove that the money,—that according to this contract—if I had to show that I furnished the straps under this contract, that I would pay that much back and account for the money that I paid to Mr. Polk——

"Mr. WORTHINGTON: Mr. Crawford, you mean.

"The WITNESS: Yes; if I had to account for it in that way there was a suggestion, you know; I noticed that coincidence and called his attention to it. That is what there was to that.

By Mr. WORTHINGTON:

"Q. You intended that as a suggestion that Mr. Crawford should tell a lie about it?

A. No, sir; I simply called his attention to that coincidence in the figures. I had noticed that.

"Q. You did not intend it at all as a suggestion that Mr. Crawford should say that this money sent back was to pay for the cost of the straps?

A. I merely wanted to call his attention to the coincidence if it was to be a defense in that way, that could be used." and he answered "I do not remember just exactly, but the substance of that, probably."

On further cross-examination the witness was asked whether in the spring of 1903, at the office of Crawford and Polk on the north side of F street just west of 14th street he did not have a talk with the defendant about relinquishing the contract between him and the Postal Device & Lock Company; and he answered that he did not have any such conversation. He was then asked by counsel for the defendant whether he did not go there on another occasion that spring and have a talk with the defendant, and afterwards in that office have a conversation with the defendant and Mr. Polk, and whether the defendant did not then say to Mr. Polk in his, witness's presence, that the witness was now out of it, out of this contract; and the witness said that that did not occur and he did not say anything of the kind to the defendant in Mr. Polk's presence, or to Mr. Polk.

On further cross-examination the witness testified that he was stopping at the Riggs House in Washington during the trial of the Groff case, and being asked whether when he was so stopping at the Riggs House he did not see the defendant in his said office one evening after dark and ask the defendant to write "cancelled" on the contract between him, the witness, and the Postal Device & Lock Company, and deliver it to the witness at his box in the Riggs House, and the witness replied that he did not say anything of the kind.

On further cross-examination the witness said that with his counsel, Judge Kumler of Toledo, about the time of the beginning of the Groff trial, he went to the house of Mr. Worthington and met the defendant and Mr. Worthington there for a conference about this case, that on that occasion Mr. Worthington questioned Mr. Crawford about an hour to get at the facts of the case. The wit-
132 ness was then asked whether Mr. Crawford did not say on that occasion that he, Lorenz, understood that the remittances which he Lorenz, was making back to him, Crawford—that Lorenz understood that he was to keep them and it was a secret, but that as a matter of fact he, Crawford, intended to account to his company for them; and he replied that that did not occur. The witness was then asked by counsel for the defendant whether on that occasion the defendant did not state that he, Lorenz, had come to his, Crawford's office in the spring of 1903 and have these conversations with him about relinquishing the contract and about marking cancelled on it and delivering it over at the Riggs House; and the witness said that that did not occur.

The witness then stated that at that time he thought Crawford was deceiving Mr. Worthington as his counsel. On further cross examination he testified that during that meeting in Mr. Worthington's house the witness and his counsel, Judge Kumler, went out into the

hall and had a private conference out of the hearing of the defendant and his counsel. He was then asked whether after he and his counsel returned to the room, Mr. Worthington did not turn to him and ask him to state his recollection of the things the defendant had been telling about, and whether Judge Kumler did not get up hastily and stop him and then they both went away; and the witness answered, "I think you asked me to state my recollection; you might have done that; but I don't think Mr. Kumler stopped me. He did not need to":

By Mr. WORTHINGTON:

"Q. He did not need to?
A. No, sir."
"Q. You did not answer, did you?
A. I thought that you and your client——

Mr. WORTHINGTON:

"Now, your Honor, I object——
The WITNESS (continuing): "Had better get together."
Mr. CONRAD: "He has a right to give his reasons."

By Mr. WORTHINGTON:

"I am asking you if you made any statement there about the facts after you heard Mr. Crawford's statement?"
"A. No, sir."

By Mr. BAKER:

"Q. I will ask you why you did not make a statement to Mr. Worthington on the occasion of this visit, of your side of the case?
A. Because I thought his client was deceiving him in the statement of the case, and I thought I had better let them get together first, or let the two attorneys get together; and that was the result of Mr. Kumler's and my conference—"you attorneys had better get together and define a programme."

The witness further testified that the conversation at Mr. Worthington's house was long before the witness went to the District Attorney's Office.

133 Q. I will ask you whether you did not, on that subject, at the former trial, testify as follows:

"But finally Mr. Crawford talked about that, and I told him that any way he thought fit to divide would be satisfactory to me, and I thought it would to Mr. Machen; and he thought so too, and wanted me to make the division; and I threw it off on to him, and he finally said, 'How would that do?' He thought it would be satisfactory to Machen to have him take a half and he and I take a quarter. So I told him that was satisfactory to me." Then there is another line there which the Court strikes out; then he goes on: But that was decided then and there, and that was the division that was afterwards made."

Now, did you so testify at the last trial—that the division that was afterwards made was half to Machen, a quarter to Crawford, and a quarter to you?

Mr. BAKER: I object, if your Honor please, because the witness has testified to that on this trial—that as far as Mr. Crawford was concerned, that was the division made.

Mr. WORTHINGTON: No; I am asking him about what was the division to Machen. He has said here that the division that was actually made was one-fourth to Crawford and the remaining three-fourths equally divided between him and Machen. Your Honor will see that he testified yesterday differently, and he explains that by saying he misunderstood me. I now propose to ask him whether he did not testify on three different occasions at the other trial to the same effect—that the division that was made was one-half to Machen.

Mr. BAKER: If your Honor pleases, that is what he says now. He says that as far as Mr. Crawford was concerned, that was the division.

Mr. WORTHINGTON: Oh, I am not talking about "as far as Crawford was concerned"; I am talking, as he was talking there, about the division that was *actually* made. That is the expression he uses.

The COURT: Are you reading all he said on that subject?

Mr. BAKER: No; he is not.

Mr. WORTHINGTON: No, your Honor; I am going to take different places scattered around.

Mr. CONRAD: At the former trial he testified——

Mr. WORTHINGTON: Well, now, I object to the witness being reminded, your Honor, by counsel——

Mr CONRAD: You must in justice to this witness state——

Mr. WORTHINGTON: I am going to be just to this witness; but I respectfully submit, your Honor, that with a witness in the position that he is, I have the right to cross-examine him as to his former testimony without suggestions being made to him by opposing counsel as to what that testimony was.

Mr. CONRAD: Well, Mr. Worthington, you know perfectly well——

The COURT: There is one situation here that doubtless has not occurred to counsel, and that is that you put these questions to the witness in such a way as carries authenticity with what you read from, because you read what the jury knows is a transcript of the proceedings of the first trial. That is why I asked you whether
134 you proposed, before you got through on this line, to read everything said on this subject at the last trial?

Mr. WORTHINGTON: I do propose to read everything, and if he does not remember it or denies it, I expect to prove by the stenographers that this is what he testified to. In other words, I am asking him whether he has not at the other trial testified differently from what he testified here this morning. He testified yesterday, from what I have read, and which I understood distinctly to be, that one-half went to Machen. He said that there was a hundred dollars left, but for some reasons now he says he wants to correct that, and say that three-quarters was divided between him and Machen. Now I ask him whether he did not testify at the former trial—and I am going to read everything that bears on that subject that I have a note of before I get through.

Mr. BAKER: Yes, that Mr. Worthington has a note of. Now, if

your Honor please, I insist that this question is unfair to the witness, because he does not ask him everything that he said on the former trial in regard to this division. Mr. Worthington is going to read what he has a memorandum of, he says. He picks out certain things, just the same as you could take this testimony that was taken here to-day——

Mr. WORTHINGTON: Why, you do not want me to read his whole deposition at the other trial, do you?

Mr. BAKER: No; but you could do the same thing by taking part of what he said yesterday, matter which he explains now by saying he was talking about the memorandum, and did not intend to say the $2650, but intended to say the amount that really went to Machen; so I say it is unfair to the witness to pick out one or two sentences at the last trial, and not read everything, and show that he fully explained that at the last trial.

Mr. WORTHINGTON: I want to state to your Honor that this matter was referred to at the former trial in the examination of this witness at several different times in the course of his examination. I am now reading all that was said on this subject at the particular time to which I refer.

The COURT: I understand.

Mr. WORTHINGTON: Counsel have it before them there; and if there is anything that follows or precedes it which in any wise affects what I have read in the same connection, I will be very glad to add it to what I ask.

The COURT: The objection is overruled.

By Mr. WORTHINGTON:

Q. Now I will read that again, and ask you whether this was the testimony which you gave at the former trial:

"Finally Mr. Crawford and myself talked about that, and I told him that any way he thought fit to divide would be satisfactory to me, and I thought it would to Mr. Machen; and he thought so too, and wanted me to make the division; and I threw it off on to him, and he finally said, 'How would that do?' He thought it would be satisfactory to Machen to have him take a half and he and
135 I take a quarter. So I told him that was satisfactory to me."

Then there is another line there which the Court strikes out; then he goes on: "But that was decided then and there, and that was the division that was afterwards made."

How, did you so testify at the previous trial?

A. That was true.

Mr. WORTHINGTON: Now, I submit, your Honor, that I have a right to have him say "yes" or "no" or he "does not remember," whichever he pleases——

The WITNESS: Well, I——

Mr. WORTHINGTON (continuing): And then the explanation.

The WITNESS: I will say yes, that that was the division that was afterwards made with Mr. Crawford. Now, you will find I testified in that case just as I am testifying now as to the division with Mr. Machen.

Q. Well, do you admit that the part that I read is a correct report of what you said in that connection at the time?

A. It may be; I do not admit it.

Q. You simply say it may be?

A. I simply say it with that modification.

Mr. WORTHINGTON: Now, gentlemen, I call your attention to page 584. (Reading.)

"Q. What did you do after you got that letter?"—referring to the letter of the 22nd of October, enclosing the $5,441.35 draft. "What did you do with the money? You received a check here, for $5,440.35. What did you do with it?

A. I deposited it in the bank, and then I remitted to Mr. Machen $2650.65, and remitted to Mr. Crawford $1325.30"——

Mr. BAKER: Where is that, Mr. Worthington?

Mr. WORTHINGTON: Page 584.

Mr. BAKER: What part of the page?

Mr. WORTHINGTON: I was reading here (indicating). Here is where the question begins.

Mr. BAKER: Oh, yes; I see.

Mr. WORTHINGTON (reading): What did you do after you got that letter? What did you do with the money? You received a check, here, for $5,440.35. What did you do with it?

"A. I deposited it in the bank, and then I remitted to Mr. Machen $2650.65, and remitted to Mr. Crawford $1325.30, which is one-quarter of that division, plus the $140 which he says here is 'to pay our friends on account; will explain to you,' making $1465.30."

Did you so testify at the last trial of this case?

A. I do not remember. It does not say that the $2650 was applied on this case.

Q. Oh!

A. On this particular transaction.

Q. Well, do you mean that you remitted him $2650.65 about that time?

A. I do not know.

Q. You do not know?

A. I do not remember that; I do not know what figures I had in my head at that time.

136 Mr. CONRAD: There is no question about the correctness of that transcript.

Mr. WORTHINGTON: Well, we undertook to make some arrangement about that the other day, and his Honor suggested that the witness might have some rights in that regard.

Mr. CONRAD: It is absolutely correct.

By Mr. WORTHINGTON:

Q. I refer now to page 680 of the previous trial. I will ask you now whether this occurred on your examination then:

"Q. Now, you said yesterday that you sent Mr. Machen the proportion of this $5,441 which is shown by that memorandum?

A. Yes, sir."
Did you so testify at the previous trial?
A. Well, that is a mistake if I said that.

Mr. BAKER: Where do you read that from?
Mr. WORTHINGTON: Why, here it is. Have you got page 680?
Mr. BAKER: Yes.
Mr. WORTHINGTON: Now, if there is anything further there that you want me to read, I will do so. I do not see that what follows has any connection with this. It goes on to say, "How did you send it to him?" and speaks about these drafts.
The WITNESS: Of course I had in mind, if I said that, the proportion that was agreed to be sent to him. If I said——
Mr. WORTHINGTON: There seems to be something more there.
The WITNESS: If I said it in that way, of course, I made a mistake, because it is not correct. I meant, of course, to say that the proportion that was due him——

By Mr. WORTHINGTON:

Q. You meant, when you said you sent him $2650, that you sent him $1988.01; did you?
A. Well, that was a misleading question you put to me.
Q. What was?
A. No; the other, about the $2650.

Mr. WORTHINGTON: Very well. The jury hears the question and the answer. I will not read them. Now, is there something further there that you want me to read?
Mr. BAKER: No.

By Mr. WORTHINGTON:

Q. Now I will read the next reference which I have, page 682, just a little further along—the bottom of page 682. It is hard to tell just where to begin, as it runs in with other things. I will begin near the top of that page so as to get the whole connection. I ask you whether this occurred after what I have been reading to you:
"Q. Well, now, what is the total amount of what was sent to Machen, including the $2500?
A. Including the 2500?
Q. Yes.
A. $4488.01.
Q. Now, take the $2500 from it, please.
A. It leaves $1988.01.
Q. That was $100 over it, was it?
A. That was $100 over these three.
137 Q. You said you sent him twenty-six hundred and some dollars?
A. Twenty-six hundred dollars even; $1800 and $800.
Q. I suppose that is very clear, Mr. Lorenz, but I do not understand it.
A. Well, that is easy to understand.
Q. I have no doubt it is my weakness.

A. Mr. Machen's share of this Crawford deal here was $1988.01.

Q. Why, no; you said it was $2000. You said you sent him $2000.

A. When did I say that?

Q. You said it yesterday, and you said it now. Here is your memorandum, "A. W. $2650.65." You said you sent it to him—you said so yesterday and you said so this morning. Now I want to know how you sent it to him?

A. I did not say that.

Q. You did not.

A. I beg your pardon.

Q. Very well.

A. Now, wait a minute; if I did—I will tell you what I say.

Q. If you did you will take it back, will you?

A. Yes, sir. Now, wait a minute."

Did that occur at the former trial?

A. Well, I do not know.

Q. Very well.

A. I do not remember.

Q. Now, can you explain how it is that at this trial you testified that you made a remittance to him in accordance with the memorandum——

A. Now——

Q. One moment; let me finish my question, please.

A. Yes, but do not——

Q. I want you to explain to the jury how it was that yesterday you testified that you sent him in accordance with the memorandum, and today you said you did not send him in accordance with the memorandum, and at the previous trial you testified three times that you did send it to him in accordance with the memorandum and then finally took that back and said you did not? Now, if you have any recollection on the subject at all, why was it that you made those contradictory statements then and now?

Mr. BAKER: I object to that question, on the ground that that does not properly state what the witness has testified to.

The COURT: I do not know whether I have a right to say whether the impression that was made on me is the same that was made on the jury.

Mr. WORTHINGTON: Well, your Honor, I think that if that question strikes your Honor as being one of doubtful fairness to the witness, I will withdraw it. I will withdraw it unless your Honor is quite clear about it. I do not ask your Honor's ruling on it as to whether it is admissible or not. If your Honor has any doubt as to whether that question ought to be asked, I will withdraw it, and I will leave this matter to be commented on in the argument, and counsel can hear what I have to say and can reply to it.

By Mr. WORTHINGTON:

Q. Your remittance to Mr. Crawford, I understand, was made in pursuance of the memorandum, whether your remittance to Mr. Machen was or not?

A. Yes, sir.

Q. Now, I observe that the memorandum says: "1465.30"
138 and the bearer draft says "1465.34." If you drew that from this, how did you come to get the cents wrong?

A. I had distributed the amount of the bearer draft, the amount of money I had in accordance with the intention of this memorandum.

Q. Oh! You did not distribute it in accordance with the memorandum, even with Mr. Crawford?

A. I should say that that is in accordance with the memorandum. It was subject, of course, to my correction as to cents there—the difference in the division that we made.

Q. Then that memorandum does not represent with absolute correctness even what you sent either Machen or Crawford?

A. Those checks and drafts—there is a difference there of a cent in division.

Mr. BAKER: It makes a difference of ten cents somewhere in the division.

The WITNESS: No; I should say it makes only a difference of two or three cents.

Mr. WORTHINGTON: Now, this is a plain matter. The witness says that——

Mr. BAKER: You are trying to confuse him.

Mr. WORTHINGTON: Oh, no; you know better than that. You know that he said Mr. Crawford sent him a memorandum to distribute this money in that way, and he distributed it in accordance with the memorandum. I asked him, if that is so, how it happened that even the remittance to Crawford was not in accordance with the memorandum.

The WITNESS: Well, I should say, Mr. Worthington, now, without quibbling at all, that that is in accordance with that memorandum.

Mr. WORTHINGTON: Very well.

The WITNESS: I figured it out afterwards, and of course if he made a mistake of a cent or so in his figuring, it was subject to my revision. The fact of it was the division, the quarter and the half, and so on.

(At this point the Court directed that a blackboard should be sent for, in order that the figures referred to might be made intelligible to the jury.)

Mr. WORTHINGTON: I hope you will understand and the Court and jury will understand that I do not make a question that the amount that Mr. Lorenz was to send to Mr. Crawford was one-quarter, and he did send it to him. I stated that in the opening.

The COURT: Well, I am going to have these figures so that the jury can see what you are talking about.

Mr. WORTHINGTON: My question is whether he had that memorandum before him when he drew that draft or when he got the money.

The WITNESS: May I look at that memorandum a moment, Mr. Worthington?

Mr. WORTHINGTON: You may, certainly, have that privilege, Mr. Lorenz.

(A blackboard was thereupon brought into the Courtroom,
139 and Mr. Given started to copy the "Copy of original memorandum" on the blackboard.)

Mr. WORTHINGTON: Now, your Honor, is it necessary to put down those initials there, and everything.

The COURT: Well, what I really had in mind was to put on the blackboard the amount that actually was sent to Crawford; then to put down the total figures, and make the computation that the witness says he made, and let the jury see it.

(After an informal conference as to the mode of procedure:)

The COURT: Now let the witness take the chalk and make the computation which he says he made.

The WITNESS: Well, I simply figured this correctly, your Honor.

The COURT: Well, figure it again so that we will know what you mean.

(The witness thereupon wrote the following figures on the blackboard:)

5441.35
140.

2)5301.35

2650.67

The WITNESS: There is the whole thing, right there. You see, you put that "65" instead of "67," and you will find that makes the difference. Dividing that by two simply carried that down to the $2650.35, you see, and that is the correct computation—67. And if you will figure that on down from there, you will find from these other figures that that makes the difference of the cents that he is talking about. I simply figured this correctly, and made the division, you know, and sent the drafts according to that; and that is according to the memorandum, just as it was as I figured it. And when I say "according to the memorandum," I mean according to the idea of that division, and the way it was intended to be divided; and I divided it correctly. Now, I want it to be understood that of course I was not trying to evade or to give any different testimony here, or anything of that kind. That is that was done, now, and you can interpret it any way you want to. That "7" might have been an "8;" I don't remember. Either would have been correct. It is 7½.

(The witness thereupon made the following computation on the blackboard, using the 2650.67 already upon the board:)

2)2650.67

1325.34
140.

1465.34

140 The WITNESS: Is that the amount of the draft—$1465.34?

Mr. BAKER: Yes; that is the same amount.

The WITNESS: There it is, you see. That is the correct division. There was $140 deducted from that, according to the memorandum there, in which he says that that is to pay "our friend," or something of that kind. Then the division left $5301.35. Now, that was divided into four, you see, by 2. As he divided it there, it is $2650.67 instead of "35;" that is 67½, really, but of course we have not made any fractions; and divide that again by 2, which would be a quarter, what was left would be $1325.34. Add the $140 which he was to pay to these parties, you see, and it made $1465.34, which is the exact amount of the draft that I sent to him to "bearer." And the whole controversy is right between that division, right there. That makes the difference; and I submit to the jury or anybody else——

Mr. WORTHINGTON: Now, Mr. Lorenz, just one moment if you please. These gentlemen will argue the case when the time comes.

The WITNESS: I simply wanted to make myself justified in that.

By Mr. WORTHINGTON:

Q. You did not then, draw this draft or what you did to get the money to send to Crawford from the memorandum, but figured it for yourself?

A. Well, I should say that I was getting it from the memorandum.

Q. Very well. You knew before you got the memorandum, you say, that he was to get one-fourth?

A. Yes, sir.

Q. Well, you did not need the memorandum to tell you that, did you?

A. No; the memorandum showed that he agreed to it.

Q. Now, in what I read to you a moment ago about this same subject, you had said (page 680)—after you had said that you sent him, Mr. Machen, his proportion of the money shown by that memorandum, this takes place, and I want to ask you if it is correct:

"Q. How did you send it to him?

A. I sent it to him by a draft for $500.

Q. That you were to get 45 cents on Class "A," $1.19 on Class "B," and 84 cents on Class "C," and the profit on the straps was to be deducted from that?

A. Not the profit.

Q. Well, the cost of the straps?

A. Yes.

Q. I beg your pardon; that was my mistake. You have told us that you know Mr. Polk?

A. Yes, sir; I know him.

Q. Who was associated with Mr. Crawford in some way over there in the Atlantic building?

A. Yes, sir.

Q. Do you remember seeing Mr. Polk when you were here about the time before the Groff trial, sometime in the year 1903 and before the Groff trial?

A. I could not say just when I saw him; I think I did during the Groff trial.

Q. Do you remember going into the office where he had his office, up on F street—where he had his office at that time, on F street, the other side of Fourteenth, and seeing him, and then walking down F street towards this park when the Pension Office building is?

141 A. No, sir. I remember seeing him in his office, but I do not remember any walk down there.

Q. Do you remember any talk that you had with him on the subject of a coincidence in some of the figures that are on that blackboard, along with some other figures?

Mr. BAKER: I object to this, unless it is offered for the sole purpose of attempting to impeach the witness; it being collateral to any fact that was asked the witness on the direct examination.

Mr. WORTHINGTON: I am offering it for the sole purpose of impeaching the credibility of the witness. Is that satisfactory?

Mr. BAKER: That is satisfactory.

By Mr. WORTHINGTON:

Q. I ask you whether you remember at any time along there having a conversation with Mr. Polk in reference to a certain coincidence which you told him you had discovered in regard to some of the figures involved in this case, some of which are on that blackboard?

A. No, sir; I do not.

Q. You did not?

A. I may have, but I do not remember it.

Q. What do you say?

A. I may have, but I do not recollect it.

Q. Well, now, referring to the testimony at the former trial, page 697: (After a conference with Mr. Conrad:) You understood that I asked you if you remembered a conversation with Mr. Polk in this park here?

A. Do you ask me that question now?

Q. Yes.

A. Yes; I do not remember it.

Q. You do not remember it?

A. No, sir.

Q. Now, I will ask you whether, at the former trial, on page 697, on that subject, you testified in this way:

"Q. Well, now, do you not understand that I am asking you what you said to Mr. Polk?

A. Well, yes, sir; I do."

The COURT: How is that appropriate? Why are you reading now from what he said at the prior trial?

Mr. BAKER: He is one minute trying to impeach him, and the next minute trying to bring out something that happened on the other trial.

Mr. WORTHINGTON: He testified at the former trial that he had told Mr. Polk he discovered a coincidence.

Mr. BAKER: I object.

The COURT: How is that relevant to this case—what he told Polk?

Mr. WORTHINGTON: Why, because I propose to show that he

made a suggestion to Mr. Polk that he conveyed to Mr. Crawford about telling a lie about this case for their joint defense.

The COURT: Well, you would have to ask him first concerning the fact before you can prove what he said elsewhere on the subject.

Mr. WORTHINGTON: Well, there was not anything else there. All there was of it, according to my information, is what originated in his brain and was communicated to Mr. Polk. I propose to ask him whether he did not tell Mr. Polk that he had discovered—let me have a little piece of chalk, please. It appears here that the cost of the Lamb strap was 29½ cents. I do not know whether I can
142 do this right or not, but I will try. It appears also that there were five thousand straps and bags paid for on that first delivery for which this $5441 came.

(Mr. Worthington thereupon made the following computation on the blackboard:)

$$\begin{array}{r} 29\frac{1}{2} \\ 5000 \\ \hline 145000 \\ 25 \\ \hline 1475.00 \end{array}$$

Mr. WORTHINGTON: Which would be $1475; and I am trying to ask him whether he did not suggest to Mr. Polk and ask him to suggest to Crawford that that was so near the fourteen——

The COURT: Oh, no; you can ask him that. The point I was making was that you have not asked him that, but you are asking him what he may have said on the prior trial.

Mr. WORTHINGTON: Well, I had asked him first, your Honor, whether he had not said this to Mr. Polk and had the conversation with him, and he said he did not remember saying anything about it. Now I am asking him whether, at the former trial, he did not testify that he did remember it.

The COURT: You did not ask him whether he had not said so and so before; you asked him if he remembered a conversation, and he said he did not.

Mr. WORTHINGTON: I think your Honor is mistaken about that. I think I did ask him if he did not make a suggestion to Mr. Polk about a coincidence in these figures, and he said he did not remember anything of that kind.

The COURT: I know; but that is not enough to lay the foundation for contradicting the witness. You have got to put an express statement in his mouth, and ask him if he did not say so and so. In other words, must you not ask him now, here——

Mr. WORTHINGTON: I am trying to find, your Honor, the place where my memorandum is that I——

The COURT (continuing): As to the fact; and then, if you claim the answer he gives now is different from what he gave on another occasion, you may ask him about the other occasion.

Mr. WORTHINGTON: In the first place, he says he does not remember seeing Mr. Polk at all.

The WITNESS: Oh, no; I do not say that.

Mr. BAKER: He said he did not remember having the conversation that you asked him if he had.

The WITNESS: I do not remember ever seeing him in this park. I remember seeing him at his office.

By Mr. WORTHINGTON:

Q. Well, do you remember having any conversation with
143 Mr. Polk on the subject of the evidence in the forthcoming trial against you and Mr. Crawford?

A. I do not remember; I may have.

Q. Do you remember that you showed him an envelope on a certain occasion with some figures on it?

A. No, sir.

Q. Did you not, in this park, in the fall of the year, 1903,—when I say "this park" I mean Judiciary Square—say to Mr. Polk, in substance, that you had found, that you had discovered that the straps for the 5,000 bags at 29½ cents would amount almost to exactly what you had sent back to Crawford of the $5441.35, and say further to Mr. Polk, in substance, (that it would be well for Crawford to testify at the trial that that $1465 and some cents was sent back to him as repayment for the straps, as a payment on account of the straps for those 5,000 bags?

A. Now, you ask me whether I said that?

Q. Yes.

A. No, sir.

Q. Did you say anything on that subject to him?

A. I may have said something on that subject?

Q. Well, what was it?

A. I do not remember.

Q. Now I will ask you whether you testified at the former trial that you did say something to him on the subject, and what it was; and I will read what I have in mind. I am reading now from page 697:

"Q. Well now, do you not understand that I am asking you what you said to Mr. Polk?

A. Well, yes, sir; I do.

"Q. I think you ought to. Tell us what suggestion you made to Mr. Polk about what Mr. Crawford should testify to.

A. The suggestion I made was that there was a coincidence in these figures here that might be used in defense, if we had to defend ourselves on that point. That was this: That the expenses deducted from the first remittance, and the remittance that I sent to Mr. Crawford, would almost exactly, within a dollar and a few cents, make up the amount of the price of the 5,000 straps at 29½ cents, I think; at least, the price they were supposed to cost us.

"Q. That comes out very close I see.

A. I think within a dollar or two.

"Q. Tell the jury in full what suggestion you made to Mr. Polk about that.

A. That was the suggestion, that there was a coincidence that might be used in case a person wanted to prove that the money—that according to this contract—if I had to show that I had furnished the straps under this contract, that I would pay that much back and account for the money that I paid to Mr. Polk——

"Mr. WORTHINGTON: Mr. Crawford, you mean.

"The WITNESS: Yes; if I had to account for it in that way, there was a suggestion, you know; I noticed that coincidence and called his attention to it. That is what there was to that.

"By Mr. WORTHINGTON:

"Q. You intended that as a suggestion that Mr. Crawford should tell a lie about it?

A. No, sir; I simply called his attention to that coincidence in the figures. I had noticed that.

"Q. You did not intend it at all as a suggestion that Mr.
144 Crawford should say that this money sent back was to pay for the cost of the straps?

A. I merely wanted to call his attention to the coincidence; if it was to be a defense in that way, that could be used."

Now, did you so testify at the last trial of this case?

A. I do not remember just exactly, but the substance of that probably.

Q. Well, did this actually happen, then, that you testified to? Did you make this suggestion to Mr. Polk about this coincidence, and suggest that it might be used by way of defense?

A. I don't remember whether it was to Mr. Polk or Mr. Crawford, but a suggestion as to the coincidence in the figures was mentioned by me to one or the other of them.

Q. Yes, sir. Now, after that happened, did not Mr. Polk say to you that Mr. Crawford would tell the truth, in substance, and would not tell a lie; and did you not say then that you would see Mr. Crawford yourself about it?

A. No, sir.

Q. Very well. Did you see Mr. Crawford that spring, the spring of 1903? Did you see him at all?

A. I do not remember whether I did or not—in the spring.

Q. In the spring of 1903, after the investigation began and was publicly known to be on foot?

A. I cannot remember whether I saw him then or not. It seems to me—it seems to me I did, but I am not sure; I would not say.

Q. Do you remember that his office in the spring of 1903 was not in the same place where it was when you had seen him in 1902?

A. Yes, sir; I remember where his office was in the spring of 1903.

Q. In 1903 he had gone over to the north side of F street, just the other side of Fourteenth, had he not?

A. Yes, sir.

Q. Where he and Mr. Polk had offices together that spring?

Witness further testified that he sent a draft for $488.01 a draft for $900, a draft for $1800, a draft for $800, and a draft for $500, making a total of $4488.01; that about this time he received two

drafts for $2500. each from the Groff Brothers, one-half of which he sent to Machen and deducting the $2500. from the $4488.01, there remained $1988.01, the amount due Machen, or the moneys received from Crawford under witness' contract with him.

On re-direct examination the following questions were asked the witness:

Q. Was not the following question asked you:

"Q. Now let us go back a moment before going to the next letter. In your conference with Mr. Crawford in Washington, referring to what you have already testified to, after deducting twenty-five cents a bag and cost of production, a balance to be divided between you and Machen and Crawford, please state if anything, and if anything what, was said as to the proportions that each of you were to receive, state fully, now, what occurred, so far as you can.

A. The division between us three was referred to first by Mr. Machen in one of the interviews at my room at the hotel. He indicated or he said to me that it was possible, in speaking of this division, that it was possible that Mr. Crawford would suggest a division of a quarter for himself, a quarter for me, and a half to
145 Mr. Machen; but he said: "You see Mr. Crawford, and in that respect, now, do just what you think best. You two arrange it;" and he said: "Whatever arrangement is made between you and Mr. Crawford, you and I will divide;" indicating that if he got a half and I got a quarter and Mr. Crawford a quarter, that the three-quarters coming to us two would be divided equally."

Did you so testify on the former Trial?

A. Yes, sir; that is right.

At this point, by leave of the Court, counsel for the defendant interrupted the re-direct examination to ask the witness whether at the time that the agreement between him and the defendant was entered into in June, 1902, as to which he had testified on his direct examination, there was any conversation between him and the defendant on the subject of Machen being induced to use his influence to have the committee appointed to pass on the bids or to have that committee make an award of the contract to the Postal Device & Lock Company, and he said he would answer, no, to that question. He was then asked by counsel for the defendant whether anything was said between him and the defendant at that time about getting Machen to use his influence in having satchels ordered if the contract should be awarded, or having bills approved, and he answered the question in the negative.

The re-direct examination of the witness being resumed, he testified as to the memarandum, (Exhibit Crawford 28) that he got the figures on that memorandum from the defendant here in Washington on either the 4th or 5th of June, just before the letting of the contract; that that paper was written afterwards in response to a letter from the defendant; that he copied it from a memorandum that he took here in Washington at the time, on the 4th or 5th of June.

Thereupon the Government called as a witness, JOHN D. KING, and also FRANCIS M. CRISWELL, both of whom testified that they saw George E. Lorenz in April 1902 at Machen's office in the Post Office Department in Washington where they and others were engaged in organizing a mining company. Said King testified that that business meeting lasted half an hour or so.

Counsel for the Government then proved that on October 12th, 1905, the following letter was sent by the Department of Justice to the United States Attorney at Cleveland, Ohio:

OCTOBER 12, 1905.

John D. Sullivan, Esq., United States Attorney, Cleveland, Ohio.

SIR: In the case of the United States *vs.* Machen, Lorenz, D. B. Groff and S. A. Groff, the judgment rendered against Lorenz in the sum of ten thousand dollars remains unsatisfied. Please take steps to collect this judgment, if the defendant has any property in your jurisdiction. The United States Attorney for the District of Columbia will, of course, honor any request you may make for information and copies of necessary papers.

Respectfully,

M. D. PURDY,
Acting Attorney General.

146 It was then agreed by counsel for the Government and by counsel for the defendant that the books of the Raleigh Hotel in Washington showed that George E. Lorenz arrived at that hotel on the 16th of April, 1902, and that he left that hotel on April 18th, 1902, between the hours of 12 noon and 6 o'clock P. M.; also that said Lorenz registered at said hotel on the 3rd of June, 1902, and left the hotel June 9th, 1902.

Thereupon by leave of the Court and under a general agreement between counsel, counsel for the defendant read to the jury the following extract from the testimony of SPENCER TRASK at the first trial of the defendant:

"Q. Will you state to the Court and Jury the manner in which this contract was brought to your attention, and what you did with reference to it, the contract or the supposed contract, beginning at the beginning, as early as your recollection goes?"

I should say that it is only a part of each of these two answers that I care about, but it is only fair to the witness to give the whole question and answer so as to show the connection. (Continuing reading:)

"A. During these previous few years, as a matter of course I had been put to considerable expense in the steady advances to the company. We had sold to the Government a number of these boxes, which were installed at Hartford, and were said to have been a great success. I think they are still there, and are still looked upon very favorably. But the expense of making them, which was something like $30 or $40, to be put in competition with a collection box at $4, was out of the question. In the meantime the expenses for carrying on the improvements in connection with the collection boxes were

such that I was constantly called upon for advances; and, believing in the future of the company, believing in the future success of it, why, having already advanced so much, it was a small matter for me to go on and advance more from year to year, which I did."

"Q. During the first years of this business, when their business was mainly in regard to this registered letter device and the keyless box, did you participate particularly in the management of the affairs of the company or leave it all to the officers and Mr. Crawford?

A. I left almost everything to them. As a matter of course, at that time personally I was interested in the success of it, entirely independent of the money interest; I am not speaking so much of the money question. With me that was comparatively unimportant; but I am very much interested in all mechanical devices and took a good deal of interest in the mechanical development of this thing and consulted in regard to it; and naturally if I had to advance money as I was advancing it, I wanted to keep a general track of the matter as to whether it gave promise of being successful or not. To the details of the matter, however, I never gave any attention."

147 Thereupon counsel for the defendant gave to the jury evidence tending to prove that prior to the spring of 1903, when matters relating to the investigation of the Post Office Department became public, the reputation of the defendant among those who knew him, for honesty and integrity, was good.

Counsel for defendant further gave evidence to the jury tending to prove that the statements made in the report of the committee, composed of John B. King, J. E. Bell and Emanuel Speich, in evidence, were true; that in recommending that the satchel contract be awarded the Postal Device & Lock Company each of the members of said committee acted honestly and that neither said Machen nor anybody else (except the respective bidders and their representatives) gave them any advice or made any suggestions in regard to the performance of their duties.

Counsel for the defendant then called as a witness JAMES K. POLK, who testified that he is 37 years old, a member of the Bar, that in 1902 he was a clerk in the office of David A. Gourick, attorney-at-law, in the Atlantic Building in Washington, that he became acquainted with the defendant in 1896, that in December, 1900, or early in 1901, the defendant came to the Atlantic Building and took an office right across the hall from where the witness was employed; that an arrangement was made between him and the defendant by which the name of Crawford and Polk was to go on the office door, so that he, Polk, could attend to the defendant's business when the defendant was out of town; that that arrangement continued until September 1st, 1902, when the defendant removed from the Atlantic Building to 1407 F street, N. W., the witness remaining with Mr. Gourick as his clerk; that between September 1st, 1902, and March 1st, 1903, the witness did not have any relations with the defendant, and saw him during that period only once or twice; that on one of those occasions, about the 15th of January, 1903, it was arranged between him and the defendant that they should go into partnership

on the 1st day of March, 1903; that he did go to 1407 F street and joined the defendant in March, 1903; that a partnership agreement between them was put in writing, but was not signed; that for various causes the matter was delayed until the end of March when this investigation had started.

Q. Well, the fact is that it was put in writing, but never signed?

A. And I did put it in writing, after going there, the first day of March; but the contract was never signed.

Q. Why?

A. Well, Mr. Crawford was away when I went there the first of March, and he returned probably after an absence of four or five or ten days, and he was busy, very busy, when he got back, and we did not have a chance to go over it together; and we just deferred the matter, as people will with a thing that they know that they can straighten out all right when they get around to it but that it takes time. And it went on until about the end of March, after this investigation had started, and then Mr. Crawford said——

148 Mr. BAKER: I object to what Mr. Crawford said.

The WITNESS: Then we never entered into any arrangement.

Mr. WORTHINGTON: Now, I offer to prove what Crawford said, your Honor. The Government has gone into their relations, and has shown that this witness did not go into business with Crawford. That has gone in, and I want to prove what Crawford said, to show that he did not want Mr. Polk to go into partnership with him until these troubles were over.

The COURT: The objection is sustained.

Mr. WORTHINGTON: I would like to have my exception, your Honor.

Thereupon said Polk on his further direct examination said that he prepared the first Lorenz contract; that he met George E. Lorenz about five weeks prior to June 3rd, 1902, in the office of Craword & Polk; that he went over there and was introduced by the defendant to Lorenz and had a conversation with Lorenz and the defendant when they were both present and both participating; that Lorenz stated, or one of them stated, that Lorenz had intended to put in a bid on letter carriers' satchels to get the contract and that they had determined to combine and put in a joint bid, that witness's instructions were to prepare a contract that should be a kind of partnership contract, but not exactly a partnership contract, in that the Postal Device & Lock Co. which Crawford represented was to control the situation; that is, the bid was to be put in the name of the company, the checks were to be made payable to it, all sub-contracts were to be entered into by it, and Lorenz' interest in it was a participation in the profits; that his instructions at that time were further that he was to incorporate in that contract a statement that Lorenz had intended to put in a bid and that he refrained from putting in a bid; that he, Lorenz, was acquainted with a western strap manufacturer and was in a position to give the Postal Device & Lock Company the benefit of low figures which he could get from this western man; that Lorenz mentioned the name of the strap manufacturer, but witness

could not recall the name and would not know it if he would hear it, but that the manufacturer lived in Toledo, Ohio; that witness was instructed at that time to prepare that contract and to have it ready for execution at a later date; that they were not going to execute it right away; that witness then left and did not see any more of Lorenz until the date the contract was executed; that he, witness, prepared the first Lorenz contract a week or two after this conversation—that he could not recall just how long it took him—and that after he had prepared the contract he delivered it to the defendant; and he identified the first Lorenz contract in evidence as the contract which he so drew up.

On further direct examination Mr. Polk testified that he prepared also the second Lorenz contract in evidence, that he received his instructions in reference to that contract some time between the 6th day of June and the 19th day of June, 1902; that his instructions were simply to make a memorandum of the terms and to prepare the contract in the event that the Postal Device & Lock Company
149 were given the award; that he was requested by the defendant some time between the 6th and the 19th of June, 1902, to go over into his, defendant's office; that there, according to the best of witness's recollection, Lorenz was present, and it was stated that they desired to enter into a substitute agreement to take the place of the agreement of June 3rd; but it was also stated that they simply wanted witness to make a memorandum of the terms as they were given to him, and to prepare the contract only in the event that the Postal Device & Lock Company secured the award of the contract; then he made notes of his instructions at that time but destroyed them after having reduced the contract to writing; that he waited until after the contract was given to the Postal Device & Lock Company, and then prepared the contract and delivered it to the defendant about the 1st of July, 1902; that the defendant left Washington about the middle of July, taking the contract with him; that the defendant returned early in August, and handed the paper which the witness had so prepared back to him, with a number of corrections and additions in the handwriting of the defendant; that witness had the paper typewritten in accordance with the changes made in it by the defendant, and that the second Lorenz contract in evidence was the result; that witness mailed that paper to the defendant either in New York or Hartford, about the 6th or 7th of August, 1902, very soon after the defendant went away.

Referring to the memorandum of May 29th, 1903, at the foot of the second Lorenz contract, purporting to be signed by the witness and the defendant, the witness testified that that memorandum was signed by him and by the defendant on the 29th of May, 1903; that he accompanied the defendant to the office of the Fourth Assistant Postmaster General (Mr. Bristow) in the afternoon of that day for the purpose of delivering to Mr. Bristow the two Lorenz contracts that it was noted after the contracts were delivered up that the second one did not bear any date; that Mr. Fosnes (a Post Office Department Inspector) or Mr. Sullivan asked witness when it was executed; that witness without mature reflection, said he thought it was executed in

the forepart of August certainly; that thereupon Fosnes dictated that statement to a clerk in the next room, and said to witness "Is that all right?" that witness signed the statement and took it over to the defendant and wanted him to sign it; that the defendant was not present when it was dictated or when witness said it was all right, and was not within hearing nor knew anything about what it was until witness took it to him to have it signed; it was then already signed by the witness; that Mr. Fosnes then said, "We want him to sign it;" that the defendant said he did not know when that was executed, that he had not reflected about it; that witness said, "That is all right. I am sure it was executed then"; that defendant then said "All right, if you are sure I will sign it"; and that defendant did then sign it; that in fact witness did not know anything about what happened in the way of executing that paper or anything else about it after he mailed it to the defendant early in August.

Said Polk further testified on his direct examination that
150 he first knew August W. Machen about the 15th of March, 1903, when he was introduced to him by the defendant; that at that time the defendant formally introduced him to several people in different departments as his partner; that he next saw said Machen on the 22nd day of March, Sunday, 1903, when said Machen came to witness' house and said that he wanted to know where he could find the defendant—that he wanted to know where defendant's residence was; that witness gave said Machen the number of defendant's residence, and said Machen then went off in his carriage.

The witness was then asked by counsel for the defendant whether he was present in the spring of 1903, when Lorenz was in the defendant's office, and when something occurred in reference to the second Lorenz contract; and he stated yes, that it was in the month of April or May, and before the 29th of May.

Thereupon counsel for the Government objected to the witness being asked further in reference to what took place on that occasion. Whereupon counsel for the defendant stated that he offered to prove by the witness that at the time in question the defendant, said Lorenz and the witness were together in the office of Crawford and Polk at 1407 F Street and that there Lorenz or the defendant at that time stated to the witness in the presence of the other that Lorenz had relinquished the contract—was getting out of it. And counsel for the defendant stated that he offered the evidence, not only for the purpose of contradicting Lorenz but to show the conduct of the defendant after it had became known that an investigation was on foot, and that the conversation concerning which the witness was interrogated occurred after the investigation of the Post Office Department had started and had become public.

But the Court sustained the objection, and refused to allow the witness to answer the question. To which ruling of the Court counsel for the defendant duly excepted. The witness, as hereinbelow appears, was afterwards recalled and testified to the conversation had with Lorenz on this occasion.

Thereupon the witness was asked by counsel for the defendant whether in a conversation with said Lorenz in Judiciary Square in

1903, Lorenz said to him, the witness, in substance, that it would be well for Crawford to testify at the trial that the $1,465 and some cents was sent back to him as repayment for the straps, as a payment on account of the straps for those 5000 bags.

To this question counsel for the Government objected. Counsel for the defendant stated that he expected the witness to answer the question in the affirmative. But the Court sustained the objection on the ground that the words "in substance" should not be used, that the counsel should put the exact words in the witness's mouth.

To this ruling of the Court counsel for the defendant duly excepted.

Thereupon counsel for the defendant asked the witness whether on that occasion Lorenz said to him that it would be well for Crawford to testify at the trial that the $1,465 and some cents was sent back to him as repayment for the straps, as a payment on
151 account of the straps for those 5000 bags. And the witness answered that he could not say whether Lorenz said those exact words or not.

On further direct examination, the witness testified that he was present when the first Lorenz contract and the second Lorenz contract were delivered up to the inspectors; that immediately after the close of the examination of the defendant in Mr. Bristow's office on May 29th, 1902, two of the inspectors who were present at that examination—Sullivan and Simmons—went with the witness and defendant direct from Bristow's office to the office of Crawford and Polk, stopping on the way to get lunch; that as the inspectors came out of Bristow's office with the defendant, witness was told that they wanted to go back to the office right away and get the contracts. That at the office of Crawford and Polk they got the contracts and they took them at once to Mr. Bristow's office and delivered them to him there, inspectors Fosnes, Sullivan and Simmons being present; that Bristow then read the contracts, and when he had read them made a remark. Witness was thereupon asked what that remark was. To this question counsel for the government objected. Whereupon counsel for the defendant stated that he offered to prove that the remark was: "If the Groffs had acted this way it would have been better for them." But the court sustained the objection, and excluded the evidence, to which ruling of the court counsel for the defendant duly excepted.

Thereupon counsel for the defendant asked the witness the following question:

"Do you know anything of Crawford being called away from town about the time we have been speaking of here—at the time of the delivery of these contracts?"

To this question counsel for the government objected. Whereupon counsel for the defendant stated that he offered to prove by this witness and by the testimony of the defendant, for the purpose of illustrating the conduct of the defendant after it had became known that these contracts were under suspicion and that he and his company were being investigated, the following facts:

That the defendant a day or two after the interview at Bristow's

office was summoned to New Orleans on account of the serious illness of his mother; that he was at New Orleans on that occasion for a week; that when he returned he consulted counsel; and that acting on the advice of his counsel he informed the inspectors that he would not further make any statement to them; that at the same time his counsel came to the District Attorney's office, and saw Mr. Taggart, the Assistant District Attorney, who was then in charge of these investigations under the District Attorney, and told him (this being under the defendant's directions) that the defendant was then over at his counsel's office, which was a few minutes away, and would come over and see Mr. Taggart in the absence of his counsel, and produce all the books and papers he had, and answer any questions that Mr. Taggart might ask him in reference to this business; and that the government could interview him and see everything he had and learn everything he knew, and then that
152 they could prosecute him if they wanted to. Also as leading up to that, counsel for the defendant stated that he offered to prove in the same direction that the defendant was led to obtain counsel because of a number of occurrences which led him to believe that he was suspected of guilt, among them facts already put in evidence; the circumstances that within a day or two after defendant's interview at Bristow's office, the inspectors were following the defendant, watching his office (which he knew and was informed of); that they took him into a telephone booth at the Ebbit- House, and asked him to call up Mr. Machen, and having called up Machen's house, they instructed him to ask Machen if Lorenz was in town; that the answer came back from the other end of the telephone that Mr. Machen was not there; and that the party at the telephone did not know where he was. That after defendant got to New Orleans, the house where his mother lived was called up on the telephone and a mysterious conversation took place with some unknown person over the telephone, the substance of it being that the person wanted to know if Mr. Crawford was there; when he arrived, and whether his mother was sick. That before leaving Washington to go to New Orleans defendant had left word at Washington that he was called away by his mother's illness; that under these circumstances on his way back from New Orleans, reflecting upon these things, it first dawned upon defendant that he was suspected of guilt, and he thereupon went to counsel.

Counsel for the defendant stated that he offered this evidence, first, as independent evidence of the defendant's conduct after he knew that his conduct in relation to the satchel contract was under investigation by the government, as tending to show that he was innocent, and also as meeting the evidence that the government had given, as to a part of his conduct after that time which the government claimed tended to show his guilt.

But the court ruled that the evidence was inadmissible, and refused to allow the witness to answer the question, to which ruling of the court counsel for the defendant duly excepted.

On cross examination, the witness said that he did not know when the second Lorenz contract was executed; that he had no knowledge of it at all; that the statement signed by him at the foot of that

contract that the date was erased for some reason not remembered and the correct date of execution never inserted was inaccurate; that he did not know that the date had been erased until that day; that in signing that statement he did not weigh his words very carefully, but at the time he thought the statement was correct, but did not know anything about it.

In answer to a question by the District Attorney whether or not he ever saw the second Lorenz contract after it was executed by both parties, the witness said that he never saw that contract after it was executed until he saw it in April or May of 1903.

On re-direct examination, witness stated that he saw that contract, in April or May of 1903 at the office of Crawford and Polk, 1407 F St.

He was then asked by counsel for the defendant under what
153 circumstances he saw it, and answered that in April or May of 1903 he was sitting in the office of Crawford and Polk when Mr. George E. Lorenz came into the office. Witness was about to state what occurred at the time when counsel for the government objected. Whereupon counsel for the defendant stated that he offered to prove by the witness that at that time Lorenz and the defendant had a private conversation in an adjoining room which the witness did not hear; that when they came out of the room defendant had this contract in his hand, and either the defendant or Lorenz said to the witness in the presence of the other that Lorenz was now out of it; that he had relinquished his contract. But the court sustained the objection and excluded the evidence, to which ruling of the court counsel for the defendant duly excepted. The witness, as hereinbelow appears, was afterwards recalled and testified to this conversation with Lorenz.

Thereupon counsel for the defendant examines as a witness ARTHUR M. BURNHAM, who testified that he lives in Maine; that he is an inventor; that he has known the defendant four years, and has been associated with him in getting patents and exploiting them; that he knows George E. Lorenz; that he saw said Lorenz in said Crawford's office sometime between the middle and last of April of 1902; that the defendant was there; that Lorenz and the defendant were talking about mail carriers' satchels and about getting them manufactured and putting in bids; that he heard Lorenz tell the defendant that he knew of some material to make the satchels of that was nearly as good as leather, and cheaper than leather; that Lorenz had some talk at that time about a western company that could furnish material or make the satchel; that Lorenz said: "My idea is for you to put in the bid and take me in some way, if satisfactory arrangements could be made to do that;" and that witness had a faint recollection of seeing Mr. Polk at Crawford's office at that time.

On cross-examination Burnham testified that he was in the office on the occasion of Mr. Lorenz' visit, working on the box; that he had not a shop there, but was just at the desk; could not say whether it was morning, afternoon or evening; could not say how long he had been there before Mr. Lorenz or Crawford came in; saw Mr. Polk

there also; could not say what he was doing; heard Mr. Lorenz say something about material; he said: "That he knew some material that was as good as leather." Did not mention the name; could not say what the name was, but it was what witness called, 'imitation leather.' Witness further testified that he came here without subpœna from Maine; was also present at the other trial without a subpœna.

On re-direct examination he testified he got a letter from Mr. Crawford; also received a telegram; that the way he came to be present at the first trial was that he saw something in the papers about the trial when he was in Boston, and that he remembered reading Mr. Lorenz' testimony in one of the papers, and that he wrote to Mr. Craword about it, telling him that he knew something different from that.

154 Thereupon the defendant WILLIAM G. CRAWFORD was examined as a witness in his own behalf, and on his direct examination testified that he was born in 1869 and lived in Louisiana until 1893, when he became deputy auditor of the Treasury Department for the Post Office Department, and held that office until 1897, when he resigned; that while he was deputy auditor he had nothing whatever to do with the practical operation of the Post Office Department, but had charge of auditing accounts of that Department; that while he was deputy auditor he had simply a bowing acquaintance with Machen; that his recollection is that Machen never put his foot in his office while he was deputy auditor, and that he never went to lunch with him; that during the last year he was deputy auditor he studied law at one of the colleges in Washington, and was afterwards admitted to the bar in Indiana, where he spent a few months after he ceased to be deputy auditor; that in January, 1898, he went to New York and was employed by Spencer Trask to act as manager of what was then called the di Brazza Postal Device and Lock Company; that the name of the company was soon afterwards changed to the Postal Device and Lock Company; that at that time and until the latter part of the year 1900, the office of the company and the witness's headquarters were at No. 11 Broadway, New York City; that the Pegamoid Company at that time had large offices in that building; that until the spring of 1902 the principal business of the Postal Device and Lock Company was exploiting a key-less letter box, which box was operated in combination with a bag in such a way that the mail could be collected from the box into the bag without the collector getting access to the mail; that while in New York, it occurred to witness that pegamoid being a light material it might be used advantageously with the bag which was operated in connection with the keyless letter box; that in going to the Post Office Department with the agent of the pegamoid company to aid that gentleman in getting pegamoid used in connection with special delivery carriers' satchels the defendant learned, in 1898, that contracts for carriers' satchels were let every four years, and had then recently been left for a term of four years, endings in 1902; that early in the spring of 1902, the witness, on behalf of his company, got the option

from the Fabrikoid company which had been put in evidence and made preparations for introducing a bid for that material as well as real leather.

On further direct examination the witness testified that he had no acquaintance with George E. Lorenz prior to the spring of 1902; that in that spring and sometime before the 15th of April, while the witness was in Machen's office, making inquiries in reference to possible bidders for the satchel contract, Machen told him that there was a man by the name of Lorenz, who had recently been there, who was going to be a bidder, and Machen added:

"He will be back again, and I will send him around to see you if you want to see him."

Witness said to Machen that he would see Lorenz, of course; that sometime after Lorenz came to witness's office in Washington, and introduced himself to witness as Mr. Lorenz from Toledo; that
155 Lorenz then said that he had a good deal of business in Washington, among other things, business before the Treasury Department, and would like to have somebody to represent him; that later in the conversation Lorenz stated in substance that he was going to be a bidder for the satchel contract; that he had knowledge of manufacturing, and knew a man out west or in Toledo who was a manufacturer, and who could manufacture satchels; that he, Lorenz, was in a position to get close figures.

Witness was then about to state the sum and substance of his interviews with Lorenz in April, when he was asked by his counsel before doing so to give his recollection as to how long Lorenz was here about that time, and he replied that he thought Lorenz was here several days, and during that time Lorenz called quite frequently at witness's office. Witness was then asked by his counsel to state what was the substance of these conversations and whether witness arrived at any result with Lorenz. Witness replied: "What we arrived at was that I thought he was a good man and had valuable information and that he could——

Mr. BAKER: I object to the witness stating his thoughts.

Mr. WORTHINGTON: I respectfully submit that his thoughts are of the utmost importance. The whole question here is what he thought when he entered into this arrangement with Lorenz.

Mr. CONRAD: His undisclosed thoughts?

Mr. BAKER: He can state what Machen said as to his ability and everything.

The COURT: He is entitled to give his motives of course, with respect to any agreement that he entered into; but is not that different from the statement of his thoughts with respect to an individual?

Mr. BAKER: I think so, if your Honor please.

The WITNESS: I am coming to the agreement. These are the motives which led me into the agreement.

The COURT: The objection is sustained.

Mr. WORTHINGTON: I would like to have my exception. He had already said, your Honor, what he thought. (Addressing Mr. Baker:) Is the motion to strike it out?

Mr. BAKER: I move to strike out what he said. I stopped him in the middle of it.

The COURT: The motion is granted.

Mr. WORTHINGTON: Your Honor will give me an exception to that.

The direct examination of the witness being then resumed, he further testified that Lorenz at that time, among other things, said that he had been Postmaster at Toledo, and had had experience in these things, and knew all about mail bags and wanted to combine with the Postal Device and Lock Company; that the witness told him that he could not enter into any definite arrangement with him at that time as these matters had to be submitted to the company; that before Lorenz left the city on that visit he and the witness framed about what arrangement they would come to if it was agreeable to the company; that that arrangement was that Lorenz should get all
156 of the profit above twenty-five cents per bag; that witness could not now recite all the conversation pertaining to that contract, but that Mr. Polk was called in and given in substance what it was by Lorenz, and the witness thought Polk took notes of it; that Polk afterwards reduced it to writing; that after that Lorenz called at witness's office, and witness used to see him about this matter of manufacturing, about the cost, and talked that over with him; that witness had an engagement with Lorenz to see him on a certain day before he left; that Lorenz did not come and witness went around to the Hotel Raleigh where Lorenz had been stopping, and to witness's utter surprise, found that Lorenz had left town without calling on him; and without saying that he was going; that thereupon witness wrote the letter of April 18, 1902, in evidence; that that letter was sent to the Fabrikoid Company at their office in New York City; that that Company was in the habit of stamping on all letters received by it the date of such receipt; that it was the witness's custom at that time when he was busy to sometimes write at his house on Sunday; that he had no recollection as to whether he wrote this letter of April 18th at his house or at his office; that he received a reply to that letter, dated April 21st, 1902, a press copy of which reply is in evidence, the original of the reply the witness not being able to find, although he looked for it after this trouble began.

That the witness had nothing to do with having inserted in the specifications for the satchel contract in question the clause providing that bidders might bid on other materials than leather, and did not have any knowledge that it was contemplated to insert that clause before it appeared; that he had nothing to do with the sending of a letter by a manufacturer referred to in McGregor's testimony, and did not know of such a letter until McGregor testified about it; that witness's previous experience with the Department had led him to believe that bids would be received for other things than those described in the specifications; that in putting in the bid in this case his Company submitted a bid for a double shoulder strap, which was not called for by the specifications; that Lorenz returned to Washington about the 3rd or 4th of June, 1902, and explained as a reason for not coming sooner that he had been looking up this matter of

bids; that witness saw him in June at witness's office, and at the hotel several times; and that Lorenz then furnished witness figures which witness supposed he had gotten from his manufacturer in the west, and from the man he said he knew in Toledo; that the figures he had gotten were lower than the figures witness had; that witness showed him the first Lorenz contract which he had received from the company; and that Lorenz then signed it. At that time the only figures the witness had as to the cost of manufacturing satchels was a bid from Wiley and Company for real leather; and that so far as the witness was concerned, at the time the bid was put in he had no information from anybody as to what the cost of manufacturing the fabrikoid bags would be, except what he got from Lorenz.

That from the time Machen spoke to him about Lorenz, prior to Lorenz's visit in April, witness had no communication or any
157 kind, direct or indirect, with Machen, about this matter, and did not have any conversation with Lorenz or hear anything from Machen in reference to the matter; that while Lorenz was in Washington in that month—June—the witness saw Lorenz and Machen together only once, and then for a moment only at the foot of the elevator of the Raleigh Hotel when witness was leaving the hotel; that in June, 1902, and before the contract was awarded to the Postal Device and Lock Company, it was agreed between Lorenz and the witness that the first Lorenz contract should be modified, Lorenz saying that he would take hold of the strap end and manufacture the shoulder straps, which were to be made of leather; that in thus talking over the matter, Lorenz was afraid that he could not get all over twenty-five cents per satchel, that there might be some things put up against him as expenses and he, Lorenz, wanted to make that specific in the second contract; that while this agreement for a new contract was reached prior to the 19th day of June, it was not to be reduced to writing unless it was seen that the Postal Device and Lock Company would get the contract; that at that time and prior to the opening of the bids Lorenz was in the witness's office, and the drawing of the second contract was turned over to Mr. Polk, and Mr. Polk was instructed to prepared the second contract just the same as he was instructed to prepare the first contract; that witness gave Polk the instructions for the second contract, but that witness's recollection is that Lorenz was present.

That shortly after the contract with the Government was signed, witness went to Newburg, New York, where the Fabrikoid company had its factory, and to other places making inquiries about manufacturing the satchels; that Lorenz was also to make inquiries at Toledo about manufacturing the satchels; that when going off on that trip witness wrote or wired to Lorenz to let him have his, Lorenz's close figures on the question of manufacture, so that witness might have them in his investigation, in making this statement witness referred to the letter from him to Lorenz, dated July 10th; that in reply to that letter witness received the memorandum of cost and profit in evidence, (Exhibit Crawford 28) and that all the writing and figures on that paper were on it when Lorenz sent it to him in July, except the pencil figures:

45	119	84
219	316	315

which witness placed there himself after Lorenz returned the paper to him.

That when the witness sent to Corbin, for the William H. Wiley and Company samples from which he was to get an estimate of cost he sent him sample bags and straps; that he did not at that time know that the straps in use by the Post Office Department in connection with carrier's satchels were the Lamb straps, but supposed they were the straps described in the specifications under which the four years' contract was let in 1898; and that he remained of that impression until June 30th, 1902, when he received from Corbin the postal card of that date, in evidence; that shortly after that he went to Mr. Lamb's factory in New York and saw a man in charge
158 whom he did not know, and asked him the prices of these straps; that the man asked him if he was the new contractor, and being informed by witness that he represented the Company which secured the contract, the man said:

"Well, we do not sell straps to contractors," or words to that effect.

That up to this time witness expected that Lorenz would furnish the straps; that the Postal Device and Lock Company was responsible for the straps, and intended to furnish them; that shortly after this visit to Lamb's shop, witness returned to Washington, and went around to the Post office Department about orders, and saw Machen; that this was the first week in August, 1902.

Witness next stated that he asked Machen at that time if there were any orders for satchels under the new contract; that Machen said "yes." "They want five thousand rural satchels, and want them in a hurry." That Machen then said: "By the way, I want you to furnish the Lamb strap too with these satchels." Witness replied; "What do you mean by the Lamb strap?" That Machen said: "Well, the patented strap which is manufactured in New York—the carriers like those straps, and they must have that strap, and we want that strap furnished." That witness said: "Well, we will furnish the strap if it does not cost any more money, and if we can get them;" that Machen said, "Well, it does not make any difference about the cost, because we will ship you those straps" or "the government or department will ship you those straps, and we will adjust any difference about the cost before you are paid for the year's orders."

That at this time the draft of the second Lorenz contract which Mr. Polk had given the witness was in his possession; that when he knew about this new state of affairs—about the government furnishing the straps, witness took the contract which Polk had drawn and made certain changes in it, and gave it back to Polk and asked him to re-write it; that it was re-written accordingly and mailed to him at Hartford, by Polk; that this was in August shortly after witness had this conversation with Machen; that when witness received that contract by mail he thought it did have a date in typewriting; that witness next saw Lorenz towards the end of September, 1902,

in Hartford; that witness then told Lorenz that the government was going to furnish the shoulder straps and recited to him what Machen had told him on that subject; that Lorenz seemed very much surprised, but stated that he was glad to be relieved from manufacturing them; that at that time the spaces in the second Lorenz contract where figures appeared now were left blank; that witness then had the memorandum of cost and profit which he had received from Lorenz in the previous July and showed Lorenz that subtraction there, which showed what would go to Lorenz under his own figures; that Lorenz said that was agreeable to him, but that he would like to read over the contract; and that witness accordingly, at Lorenz's request, mailed it to him at Toledo; that in the conversation at Hartford, witness told Lorenz that he thought the Lamb strap would possibly cost more than the strap under the specifications; and that Lorenz said that was all right.

159 Witness being then asked by his counsel whether at that meeting at Hartford he had any conversation with Lorenz with reference to Lorenz sending back to him any part of the money that was to come to Lorenz, replied that after he had executed the first Lorenz contract in the early part of June, Lorenz made a proposition to him; that Lorenz, when he first came, away back in the beginning, stated that he was looking for somebody to represent him; that there was nothing more said about that; that when Lorenz came back in June, he said he would like the witness to represent him, because he would like to be sure that he got all over twenty-five cents; that witness told him that he did not see how he could represent him in the matter; that a few days after that, before Lorenz left Washington, and between the time when the bids were put in and the time the bids were opened, Lorenz again said to the witness "Mr. Crawford, you are very foolish. I do not see why you can not represent us both. You represent the Postal Company, and I am a partner there and interested with them in this contract, and I do not see why you can not represent me." That at that time witness waived it aside and did not make any special point about it; that in these conversations Lorenz wanted to pay witness to look after his interests; that at Hartford in September, after witness had told Lorenz about what Machen had said in reference to the Government furnishing straps, witness said to Lorenz that if he remitted to him this money under this contract, the figures for which they had filled in, that witness would be remitting him this money and not keeping any back on account of this adjustment, that they were in a quandary as to whether they could settle under this contract now; that Lorenz said that he was in the oil business and needed money; and that if witness would make him these remittances promptly he would remit witness twenty-five per cent. for reprsenting him. That as the contract was in shape, so that Lorenz received a specific amount and the Postal Device and Lock Company received a specific amount, and there could be no conflict between the two, witness accepted his proposition.

Thereupon counsel for the defendant proved by the witness, and put in evidence, the correspondence between the witness, as representing the Postal Device and Lock Company and William H.

Corbin, representing the William H. Wiley and Son Company, beginning April 21st, 1902, and running down to July 2nd, 1902, showing that during that period the witness was dealing with that company in reference to the manufacture by it of carriers' satchels, with straps.

Counsel for the defendant next proved by the witness certain correspondence between the witness, representing the Postal Device and Lock Company and John Aspinwall, representing the Fabrikoid Company, which showed that the contract in evidence between the Fabrikoid Company and the Postal Device and Lock Company, dated September 23rd, 1902, was not in fact executed by either of the parties thereto until after the 11th day of January, 1903.

Thereupon witness upon further direct examination stated that he had correspondence with other people besides Wiley and
160 Son and Aspinwall about bags and straps prior to the time the bid was put in for the government contract.

The witness was thereupon shown and identified as genuine about thirty letters written in 1902 prior to June 3rd, which he said were part of that correspondence between him, representing the Postal Device and Lock Company and various firms and corporations, and counsel for the defendant offered them in evidence. One of said letter- is a sample of the others, and the following is a copy of the same:

930 F, *May* 2, 1902.

P. D. L. Co. 43-2 (102).

Mr. Henry Brown, 54 Taylor St., Springfield, Mass., & J. V. Abbott Mfg. Co., East Dedham, Mass.

DEAR SIR: Enclosed please find specification for various straps used in connection with an article manufactured by me.

I am particularly anxious to have the shoulder strap quotation at an early date, the other quotation to follow.

Hoping to hear from you soon,

Y'r- tr-y,

W. G. C.

Another of said letter is as follows:

930 F. ST., 4/10-1902.

P. D. L. Co. 43-2 (103).

Mr. Samuel Hipkiss, 34 Beach St. Boston, Mass.

DEAR SIR: Could you give me bid for manufacturing several thousand straps with buckles complete (for us- as shoulder straps)? If this is in your line & you can do the work, I will send you sample of strap upon which to base your estimate.

Please also quote prices on 5 Oz. oak tanned russet grained leather per square foot in lots of 10, 20 & 30,000 square feet—let me know if you have any facilities & can manufacture bags.

I also want prices on the following frames in lots of say one & two thousand each.

B-Hand made Bessemer steel #10 gauge ¾" wide, inside measurement 1.8¾" wide extreme opening 9".

C. In addition to above flat piece ¾" wide to extend from hinge to hinge to cover entirely the jaws of the frame proper when closed. (like satchel frame)

D. Same frame as "C" only 27" long.

Hoping to hear from you promptly,

Yours truly,

(Signed) WM. G. CRAWFORD.

To W. W. Winship, 71 Summer St., Boston, Mass. J. V. Abbott Mfg. Co., East Dedham, Mass. Samuel Hipkiss, 34 Beach St., Boston, Mass.

Counsel for the defendant stated that he offered these letters for the purpose of showing that the defendant was trying, in good faith, to get bids for the manufacture of bags and shoulder straps.

161 To the introduction in evidence of said letters and each of them counsel for the Government objected and the Court sustained the objection and excluded all said letters. To this ruling of the Court as to each of said letters counsel for the defendant duly excepted.

Thereupon, on further direct examination defendant testified that in latter part of May, 1902, and prior to June 6th, 1902, he had some correspondence with certain manufacturers of artificial leather (other than Fabrikoid or Pegamoid.) The correspondence referred to having been shown to the witness and identified by him was offered in evidence by his counsel, but the counsel for the Government objected on the ground that the evidence was immaterial and the Court sustained the objection and excluded all the correspondence the Court stating the grounds of the ruling as follows: "If the *bona fides* of the contract with the Government were involved, or if the question of the good faith of the defendant with respect to the quality of the material used in fulfilling the contract were involved, I should see some relevancy to these letters; but the only fraud claimed, as I recall, is that the agreement was to vest a government officer with an interest in the proceeds of a valid contract."

A copy of the correspondence so offered in evidence and excluded is hereto appended and marked Exhibit S and made a part hereof.

Thereupon counsel for the defendant moved the Court to strike out and withdraw from consideration by the jury, the contract between the Postal Device & Lock Company and the Fabrikoid Company, dated April 21st, 1902; but the Court refused to grant the motion, to which ruling of the Court counsel for the defendant duly excepted.

On further direct examination the defendant testified that from the time he saw Lorenz in Washington in April, 1902, until the time he saw said Lorenz in June following, he, the witness, did not see Machen and Lorenz together, except on the occasion hereinabove mentioned at the Hotel Raleigh; that he did not write or send to Lorenz the memorandum which Lorenz had testified he received in defendant's letter of October 22nd, 1902; that he sent said Lorenz no memorandum whatever regarding any distribution of funds;

that he never, at any time in his life, was called Bill; that when at Hartford, in September, 1902, Lorenz agreed to remit back to him twenty-five per cent. of the sums to be sent to said Lorenz under the second Lorenz contract, Lorenz asked him how he wanted the remittances to be made and the witness said, "Make it any way"; that the substance of what Lorenz said then was that perhaps he, witness, did not want his company to know that he was getting these remittances back, so then witness said to him: "You can send it by check or draft to bearer, and I will collect it in that way"; that witness told Lorenz at that time that as the Postal Device & Lock Company had paid for drawing the contract that he, Lorenz, ought to pay him for making the argument before the Committee when the bid was submitted, and that one hundred dollars would be a fair price for that, and that witness had spent about five dollars, which would cover the
162 incidental expenses in connection with the matter—making $105; that the sum of 1465.34 represented by the bearer draft in evidence was made up of one-quarter of $5,441.35 and this $105 added; that the witness in no way communicated to said Lorenz anything about $140 that Lorenz owed him, and that there never was any such sum between them; that witness cashed the bearer draft at the bank on which it was drawn instead of depositing it in the bank where he kept an account in New York, because the bank was very near—they were about four blocks apart—and Lorenz had said that perhaps witness would not want his Company to know that he was getting this money, and he left Lorenz under that impression by going to collect this draft just as Lorenz had sent it to him; that at Hartford, in September, 1902, witness had explained to Lorenz how the Postal Device & Lock Company had to pay for the straps, and that there would have to be an adjustment made; that the Government would furnish the straps and the Postal Company would make an adjustment with the Government and then the Postal Company would have to make an adjustment with Lorenz, because he had been paid, under his contract, and at that time witness had explained all that to Lorenz and told him he did not see how he could make him, Lorenz, these remittances; that Lorenz had renewed the proposition to pay witness something to represent him, and witness had agreed to do so and make him prompt remittances under that understanding; that when witness presented the bearer draft for payment at the bank in New York on which it was drawn, there was some delay about getting it paid, and the bank official to whom it was presented for payment went off to see somebody and then came back and paid it, so that when witness wrote to Lorenz to send him the remittance, about two months later than that, witness pinned to the letter a small memorandum: "Please send by express"; that witness was not requested by anybody to endorse the bearer draft; that there was some trouble and delay in collecting the express package, because for a package of that kind one has to receipt in person, so that the next time—the third remittance, of $171.62—witness put a memorandum on the letter to send by a check; that the reason that check was endorsed "Burnham Manufacturing Company, by William G. Crawford, Treasurer" was that the defendant was the treasurer of the last-named Company, and that Company

had a bank account at Riggs' Bank, whereas the only personal bank account witness had in Washington was an old one of long-standing at the Second National Bank on Seventh Street, and witness's office was nearer the Treasury, some distance off.

On further direct-examination the witness testified that when he saw Lorenz in April and June of 1902 he had absolutely no knowledge as to the relations then existing between Lorenz and Machen since developed about the Groff business; that in fact he asked Lorenz if he had any business before the department and Lorenz had said that he had none; that up to the time Mr. Wynne stated it on the stand in this trial, the witness did not know that Machen was distrusted by his superiors; that witness did not discover that in the specifications for the Government contract of June 25, 1902,
163 shoulder-straps were not required with satchels of Class B for some time after those specifications came out; that at the time he had a conversation with Machen, early in August, already referred to, witness reminded Machen that the contract did not call for shoulder straps or satchels of Class B; that Machen said that was the result of a clerical error and that the Postal Device & Lock Company would have to pay for those straps—and that that was another subject of adjustment.

The witness was then asked by his counsel the following question:

"Q. You have heard Mr. Trask's testimony here that he tried to get what he called the books and papers of the Company in your hands from you, and give them to the Government. Do you remember that efforts of that kind were made by him and by Mr. Hayden, his attorney?"

And then the witness answered:

"A. I remember that Mr. Trask made that request, as I remember it, through Mr. Hayden or Mr. Hayden made it also; and I remember that the books were not given, because I had offered, through you (Mr. Worthington), before that, and some time before that, to take all the books and papers and letters and everything to the District Attorney"——

At this point counsel for the Government objected to the witness proceeding with the answer. After a colloquy between counsel and the Court, counsel for the defendant withdrew the question and put it again in the following form:

"Q. I will ask you whether you heard the testimony of Mr. Trask, that he had endeavored to get from you such papers and books as you might have relating to the business of the Postal Device & Lock Company."

And the witness answered:

"A. I did hear him so testify."

He was then further asked by his counsel the following question:

"Q. And is it true that he had applied to you for the books and papers and you had refused to give them to him?"

And the witness answered:

"A. It is."

The witness was then asked by his counsel the further question:

"Q. Now, why did you refuse to give them to him?"

Counsel for the Government objected to the witness answering the last question. After a further colloquy between counsel and the Court, the witness's direct examination proceeded as follows:

"Q. Did Mr. Trask ask you to produce the books and papers relating to the business of the Company?

A. He asked me to produce the books that I had.

"Q. Did you give them to him or exhibit them to him?

A. I did not.

"Q. Why did you not?"

And thereupon counsel for the defendant stated to the court that he offered to show, in response to the last question, that witness, early in June, 1902, had authorized his counsel to go to the District Attorney's office and tell the District Attorney that the witness was ready, at any moment, to go to the District Attorney's office alone, without his counsel, whenever wanted, and to produce the books and papers that he had relating to the business of the Postal Device & Lock Company, and to answer any questions that the District Attorney might ask him in regard to the business of the Postal Device & Lock Company, especially any in reference to the alleged fraudulent contract with the Government of June 25th, 1902; that witness had been informed by his counsel that the latter had complied with that direction, and that the District Attorney had not asked to see the witness or his books; and that after that the witness was instructed by his counsel not to allow anybody except his counsel to have or to see any of his books or papers.

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Thereupon the Court stated that the witness might be allowed to testify as to the latter part of this offer as to instructions given by his counsel but not to the rest of it. Counsel for the Government stated that they did not object to said latter part, and counsel for the defendant stated that he would not offer that by itself. Thereupon counsel for the defendant duly excepted to the ruling of the Court excluding said proffer of evidence as made.

On further direct examination the witness said that when he sent the second Lorenz contract to Lorenz in Toledo, it, to the best of his recollection, had not been executed by the Postal Device & Lock Company; that when he received it back from Lorenz he took it to Chance in New York, as was customary; that he could not state how long it was left there, and that witness would say it was some time at the end of October or in November that he got the contract back from Chance; that witness did not remember whether, when the contract came back from Chance, the date had been erased; that according to the recollection of witness the date was there when the paper was delivered to Chance; that witness had nothing to do with the erasure of the date and did not know who made it; that as to the time when he first discovered that the date had been erased, witness did not remember whether it was over at the Post Office Department or whether it was even after that, and did not know whether, when he received the contract back from the Postal Device & Lock Company, the date was still there or had been erased; that witness's recollection was that when he received the contract from Polk it was dated August 7th; that witness did not say anything

to Lorenz at Hartford, in September, 1902, about the Postal Company being dissatisfied with the share of the profits it was getting under the contract, and that the fact was they were not dissatisfied so far as witness knows; that the reason witness did not have any remittances made to Lorenz after the one which was made in January was that Lorenz had received about as much as he could receive under that contract, by paying him a lump sum under the first contract without making deduction for the straps, and leave enough on hand for the year's orders for the straps; that shortly after that Machen came to witness' house one Sunday—it was the 22d of March; that Machen then said the only irregularity in his office was
the subject of the Government furnishing straps, and this
165 strap adjustment, and that there was no letter on file to that effect and that made it irregular; that as Machen told witness then there was something irregular about it, witness stopped making remittances to Lorenz; that a third reason for stopping the remittances to Lorenz was that few days after the visit of March 22nd Machen again, at witness' office, told him that Lorenz was a friend of his, Machen's, and that Lorenz thought there might be something illegal about the combination of bidders and wished to relinquish his contract with the Postal Device & Lock Company.

Thereupon witness was asked by his counsel what, if anything, Machen said to witness at the first visit of March 22nd, before he made the statement to witness about the only irregularity in his office being in reference to this strap matter; but counsel for the Government objected to the question. Counsel for the defendant stated that, in view of the objection, he wouldn't insist on an answer.

The witness, resuming his direct-testimony, stated that after the last conversation with Machen above referred to, when Machen informed him that Lorenz wishes to relinquish the contract, the witness told Machen that he had no power to agree to that but would go over and talk with Mr. Trask—submit the matter to him—and that he did so; that some time after Machen's second call and the time that witness was examined at the Post Office Department, Lorenz called at witness's office while Mr. Polk was present and Lorenz and witness went into a little private room on the side, where Lorenz told witness that he desired to relinquish his contract—that there was probably something illegal about the combination of bidders; that as Lorenz was leaving the office on that occasion the witness said to him, in the presence of Mr. Polk, that now that he, Lorenz, had given up his interest in the contract, he need not feel that because he had no further business he need not come when he was in town, but to drop in and see them; and Lorenz did not call on the witness to make any remittance to him after the one that was made in January, 1903.

On further direct-examination the witness testified that it was true he told the Inspectors Sullivan and Simmons in New York, on the 29th of May, that he had written contract with Lorenz; that he was not asked by anybody to produce that contract to the Inspectors or to anybody on behalf of the Government, until after the close of the inquiry that was made at Mr. Bristow's office; that witness's recollection is that he offered to get it at that time himself—that is, at the

end of that interview; that when he wrote the Lorenz letter of October 22nd, 1902, in evidence, he enclosed a receipt and a carbon copy of the same for Lorenz's signature, and that Lorenz returned them unsigned.

Said papers were produced and offered in evidence to the jury, one of them being a carbon copy of the other, and said papers are in the following words:

166 Crawford No. 26.

Wade Chance, President, New York City.
Thos. Plunkett, Sec'y and Treas., New York City.
Wm. Gordon Crawford, Mgr. and Attorney, Washington, D. C.

Postal Device and Lock Co., Government Contractors. Patentees and Manufacturers Executive Offices 11 Broadway, New York.

Manufacturers U. S. Government Supplies. Keyless Street Letter Box. Works: Hartford, Conn.

Address Branch Office 1407 F Street, Washington, D. C.

NEW YORK, *Oct. 21st*, 1902.

Postal Device and Lock Company, To George E. Lorenz, Dr.

OCT. 21ST, 1902.

To interest in 5000 satchels, Class "B", according to contract of August 7th, 1902	$5,950.00
Carried forward	5,950.00
Less expenses by Postal Device & Lock Co. according to contract of August 7th, 1902	508.65
Balance due George E. Lorenz	$5,441.65

Received payment, —— ——.

Resuming his direct-examination, the witness testified that at no time did he have any conversation with Lorenz or Machen in regard to Machen using his influence in obtaining or in any wise affecting the proceedings under it or about Machen doing anything in reference to having satchels ordered after the contract was obtained, or doing anything in the way of expediting the bills, or doing anything to the bills; that at no time did the witness have any arrangement or conversation with either Machen or Lorenz with reference to furnishings bags without straps, except what witness had already detailed in his testimony as to his conversation with Machen in August, 1902, on that subject, and his communicating that conversation to Lorenz at Hartford in September; that witness had absolutely no knowledge that Lorenz was making the payments to Machen which had been put in evidence in this trial, and had no suspicion that Lorenz was

paying any part of the money which he received from the Postal Device & Lock Company to Machen.

On further direct examination the witness testified that after the spring of 1903, and just before the Groff trial, he was present at a meeting held at the house of Mr. Worthington when Lorenz and his counsel, Judge Kumler, and the witness and his counsel, Mr. Worthington, were present.

Thereupon the counsel for the defendant asked him the following question:

"Q. I will ask you whether, at that time, you said that
167 Lorenz understood that the remittances which Lorenz was making back to you—that Lorenz understood that you were to keep them and it was a secret, but that, as a matter of fact, you intended to account to your company for them?"

To this question counsel for the Government objected, whereupon counsel for the defendant stated that he offered the testimony on two grounds; first, to show the conduct of the defendant after it became known that these charges were made against him and after he had been indicted; and, second, to show that before Lorenz went to the District Attorney's office he, Lorenz, had been advised that the defendant would testify to this fact. But the Court sustained the objection and excluded the answer, to which ruling of the court counsel for the defendant duly excepted.

Thereupon counsel for the defendant asked him the following question:

"Q. I will ask you whether, at that time, you said that Lorenz had come to your office in the spring of 1903, and had had a conversation with you about relinquishing the contract between him and the Postal Device & Lock Company."

To this question the same objection was made by counsel for the defendant and the same ruling was made by the Court; and to that ruling counsel for the defendant duly excepted.

Thereupon counsel for the defendant asked the witness the following question:

"Q. I will ask you whether you said, at that time, in the hearing and presence of Lorenz and his attorney, that you did not know or have any knowledge of any payments that Lorenz was making to Machen out of the money sent to him."

To this question the same objection was made and the same ruling was made by the Court; and to that ruling counsel for the defendant duly excepted.

Thereupon counsel for the defendant asked him the following question:

"Q. Now I will ask you whether in the fall or whether at any time, prior to the first trial of this case, and after the investigation began, Mr. Lorenz came to your office one night and requested you to mark this contract between him and the Postal Device & Lock Company cancelled, and deliver it to him at his box at the Riggs House.

To this question counsel for the Government objected, on the ground that the corresponding question asked Lorenz on cross-examination was with reference to a collateral matter. Counsel for the defendant stated that he proposed to prove that what was indicated by the question occurred about the fall of 1903, approximately about the time of the beginning of the Groff trial, either before or afterwards. The Court sustained the objection and excluded the evidence, to which ruling of the Court counsel for the defendant duly excepted.

The witness, resuming his direct-examination, testified that the memorandum in evidence (Exhibit Crawford 28) was not copied from anything that witness showed to Lorenz, but that it was prepared by Lorenz himself.

168 Thereupon the witness, on further direct-examination testified that while he was General Manager of the Postal Device & Lock Company he kept during different periods three books covering the time from January 15th, 1898, to January 30th, 1899, the three books were produced and handed by counsel for the defendant to counsel for the Government.

Thereupon witness testified that he had kept books in a way; that he had three books: Crawford No. 1, from January 15th, 1898, to January 30, 1899; Crawford No. 2, from June 30, 1900, to June 30, 1901; and Crawford No. 3, from July 1, 1901, to December 30, 1902, and that he had certain vouchers showing items of expense. Thereupon the books were handed to the District Attorney, who inquired for what purpose they were offered, and counsel for the defense stated that he only offered the part relating to the accounts of the company. Objection was made to the books prior to the time of the transaction in question, and counsel for the defendant stated he would not press them. He thereupon asked the witness the following question:

"Now, turn to pages here showing the accounts that you kept in that book covering the period from say the 1st of May, 1902, down to the end of it, wherever it goes; pages 24 to 31 inclusive."

"Thereupon the following occurred:

"Mr. WORTHINGTON: I offer all those entries in the book in evidence.

Mr. BAKER: If your Honor please, might I ask the witness a question in regard to these books?

By Mr. BAKER:

Q. Are they the books of the Company, or your own private memoranda?

A. Those are the books which I kept, of the moneys which I drew on account of the Company, and for the purpose of submitting to the Company, to the President of the Company, Mr. Chance.

Mr. WORTHINGTON: One moment. I will ask a question, to relieve you of any trouble about the situation.

By Mr. WORTHINGTON:

Q. I will ask you whether the book as it stands, with the entries in it as they are, was submitted to Mr. Chance after it was finished?

A. It was.
Q. When?
A. Early in 1902.
Q. I will ask you whether the check-marks that appear there opposite some of the items were put on by Mr. Chance?
A. I made a mistake. Early in 1903, I should have said.
Q. Yes; 1903. Do you know, of your own knowledge, who — the check-marks there that are in the book? Did you see them made?
A. I did not see them made, no, sir.
Q. What did you do with the book? You say you submitted it to Mr. Chance. Tell exactly what you did with it.
A. Mr. Chance wrote for it, and I took it to New York, to my recollection, and delivered it to Mr. Chance, for him to check, as had been his custom.
169 Q. When did you get it back?
A. I got it back in the early part of 1903.
Q. Will you state whether or not you left the batch of vouchers that correspond to that book with him at the same time?
A. I did.

Mr. WORTHINGTON: I offer all the entries in that book, down to page 31; in evidence. Those are all the entries in it. The rest is blank.

Mr. BAKER: I cannot see the materiality of the book, if your Honor please.

Mr. WORTHINGTON: Just one minute, please.

By Mr. WORTHINGTON:

Q. I wish you would take out of this package of vouchers the vouchers that correspond to this last book, which is now before you.

(The witness did as requested.)

Mr. BAKER: I might state our objection to the book——

Mr. WORTHINGTON: Wait a minute, until I get these.

Mr. BAKER: Our objection to the book is that it is immaterial to the issues involved in this case. I have examined it, and apparently it does not show any distribution of the funds here in question other than what we admit was coming to this Company. Does it show the checks that you sent to the Company?

The WITNESS: It does not show what came to the company.

Mr. BAKER: I object to it, as absolutely immaterial, then, your Honor, and not in any way reflecting on anything that is in this case.

The COURT: Let me see it.

(The book in question was handed to the Court.)

Mr. CONRAD: It contains merely private documents of the witness, your Honor will remember. He has stated that there were no Company books.

The COURT: On what theory do you offer this book, Mr. Washington?

Mr. WORTHINGTON: I offer it for the purpose of showing that the fact that he was receiving payments from Mr. Lorenz back of this

contract was communicated to Mr. Chance, as the agent of Mr. Trask, and as the President of the Company.

Mr. BAKER: Where do these payments appear which you say show that? Will you show them to us?

(After a conference between counsel on both sides and the Court:)

The COURT: What is there to show that this book has not been altered since he made the entries?

Mr. WORTHINGTON: I propose to ask him all about it. I cannot ask him anything about it unless I get it in evidence. I respectfully submit that it makes no difference whether it was altered or what was done with it if it was submitted to Mr. Chance. I offer it for the sole purpose of showing that Mr. Chance was advised. The witness already testified he had told him verbally. I offer the record now, in evidence, for the purpose of showing that he was ad-
170 vised of it in writing. The witness has testified that the book, in its present condition, was exhibited to Mr. Chance. Whether it is of any consequence at all as a matter of accounts, or what explanation it may require, I respectfully submit is a matter that goes to the weight of the evidence, and not to any question about its admissibility. If he picked up a scrap of paper and scribbled all over it, and marked it and remarked it half a dozen times, if it constituted a notice about these remittances, it would be all that would be required for my purposes.

The COURT: Well, a scrap of paper is a different thing from a book that is supposed to be an account of financial affairs. Is it claimed that this was submitted to Chance?

Mr. WORTHINGTON: He said he had submitted it to Chance in the early part of 1903. The book, as your Honor will see, is an account of transactions up to the end of 1902—or purports to be, I should say.

The COURT: When did this investigation begin?

Mr. BAKER: Not until the middle of March following. That is right, is it not, Mr. Worthington?

Mr. WORTHINGTON: It has not yet appeared just when it became public. You have proved that Macken was notified on the 17th of March that he was to be investigated, and we have proved that on the 22nd of March he made that visit to Mr. Crawford. Whether anything was said there about the investigation we do not know, because you objected to his saying anything except the one part which the Court allowed to go in.

The COURT: I am very seriously in doubt as to whether you are entitled to have the book in evidence, on the ground claimed for it, that is, that it was submitted to Chance; and on account of the condition of the book I will resolve that doubt against you. The objection is sustained.

Mr. WORTHINGTON: I will have my exception, if your Honor please.

My offer was to put the whole book in evidence; and, lest I might err in offering the whole book, I offer now the entries on the pages referred to, from 24 to 31, both inclusive.

Mr. BAKER: We object to that, if your Honor please.

Mr. WORTHINGTON: Very well, is that objection sustained, your Honor?

The COURT: Yes.

Mr. WORTHINGTON: And I have my exception.

Now, I offer in evidence the entries in this, which your Honor has seen, which relate to this contract and to Lorenz—the specific entries which relate to Lorenz.

Mr. BAKER: Show me where they are.

(Mr. Worthington showed to Mr. Baker the entries referred to.)

Mr. BAKER: I object, if your Honor please.

The COURT: You object to them all, do you?

Mr. BAKER: Yes; we object to them.

Mr. WORTHINGTON: Does your Honor sustain that objection?

The COURT: Just a moment. (After a pause:) Yes; the objection is sustained.

171 Mr. WORTHINGTON: I have my exception, if your Honor please.

Said copy book containing the pages, is hereto attached marked Exhibit R and made a part of this bill of exceptions.

It being stipulated and agreed that the original book containing the said pages shall be treated as a part of this bill of exceptions the same as if the original was herewith filed in place of said copy and the said original book is to be produced in the Court of Appeals by counsel for the defendant upon the argument of this cause.

On cross-examination of the defendant by counsel for the Government, he stated that he was very favorably impressed with Lorenz when the latter called upon him in April, 1902; and before Lorenz left the city on that occasion he had agreed to make a contract with him, and had called in Mr. Polk and talked to him about the making of the contract, subject to the approval of the Company; that he had an arrangement with Lorenz on a certain day, and then went to the hotel and found he was gone; that he wrote to the New York Leather & Paint Company letter of April 18th; that he then suspected Lorenz had gone up there; that in writing the letter of April 18th he meant by "an employé of mine from Ohio" Mr. Lorenz; that he then mistrusted Lorenz; that the reason that, notwithstanding this, he wrote on the 29th of April the letter of that date in evidence, was that the New York Leather & Paint Company wrote back that no such man had called, and the witness saw that he had misjudged Lorenz; that he could not tell what time in the day it was that Lorenz first called on him in April, 1902; that he saw Lorenz in April several times, and according to the recollection of witness on more than one day, and saw him both at witness's office and at the Raleigh Hotel; that Lorenz was in Washington about the 17th, 18th or 19th of April; that witness thinks he wrote the letter of April 18th on Sunday—not the day it bears date; that looking at that letter of April 18th, the witness could not fix the date of Lorenz's visit to Washington; that he believed the letter to contain errors in dates; that he wrote that letter shortly after Lorenz failed to keep the appointment with him, but he could not say accurately whether it was one or two or three days afterwards; that he did not remember whether the contract with

Lorenz was concluded and Polk called in the first time Lorenz was there or the first day, because he had seen Lorenz several times between the office and the hotel; that he had no advice that Lorenz was coming; that Machen had said, in a general way, that this man had been here about this particular contract work, and that he, Machen, would send him around when he came around there, as one of the bidders; and when Lorenz came in he, witness, knew that Lorenz was the man Machen was going to send; that when Lorenz first came in he introduced himself; that witness does not remember whether he introduced Polk to him on that visit or not; that he could not remember whether his first conversation with Lorenz was a lengthy one: that he had stated on his direct-examination that when Lorenz first called he sat down and "we had quite a long conversation;" that some time in May he sent to his
172 Company the first Lorenz contract which Polk had drawn up; that he sent the contract to his Company in the letter of May 28th in evidence, and witness does not know that Lorenz made directly the request referred to in that letter about Lorenz wanting the President of the Company to sign the agreement; that that was probably by inference, that the President of the Company ought to sign; that he could not say that Lorenz made that request directly; that in his letter of April 29th, 1902, in evidence, he had written that Lorenz came on to Washington to see him; that as to whether it was true that Lorenz came on to see him, he, Lorenz, said that he wanted somebody here to represent him; that he never wrote his Company a fictitious letter and never, to his knowledge willingly or intentionally wrote the Company an untruth about this contract or about Lorenz, and did not, in the correspondence in evidence ever write to his Company a falsehood; that after Lorenz was in Washington in April, 1902, he did not see him again until the first week in June; that witness's recollection is that Lorenz was here on that occasion, after the 9th of June, because witness saw him after the bids were opened and the bids were opened on June 6th; that it seemed to witness he was here sometime after that, and that he made a little trip to Baltimore or Philadelphia and came back again; that he could not state positively that he saw Lorenz here after the 9th of June; that between the time of the execution of the first Lorenz contract and the time Lorenz went away witness and Lorenz went over this contract together, known as the second contract, but did not, at that time, agree upon all the terms of the second Lorenz contract; that witness does not know that he could state all the terms of the matter agreed upon at that time, but that there was the question of the amount that Lorenz was to get and the specific amount had not been definitely settled; that the amount was agreed upon in Hartford in September, before the 25th of that month—so that there was no signed second contract up to that time; that the amounts had not been agreed upon prior to that time, but they were inferred, by which witness said he meant that he got a memorandum in July from Lorenz setting forth these figures; that he and Lorenz had talked the figures over before that—before the bids were opened, and about changing the first contract; that wit-

ness did not know, before Lorenz went away, what figures were to go into the second contract; that when Lorenz left they had figured over the figures of the cost upon which the bid was based; that before the bids went in Lorenz and witness considered a change as to the 25 cents that was to go into the first contract to the Postal Device & Lock Company, because Lorenz was to furnish the straps, so that the witness knew when he put the bids in that this first contract would be changed—that that was understood; that Lorenz brought up the subject of the straps just before the bid was put in, and that was the first conversation between them in regard to Lorenz manufacturing the straps, and that the first conversation with Lorenz in regard to the latter manufacturing the straps was in June, just before the bid was put in; that before Lorenz went away it was agreed
173 between them that Lorenz was to manufacture the straps; that under the first contract he was not to manufacture them; that they did not go over all the terms of that second contract just before the bids were put in, but did so just before Lorenz went away; that Lorenz went away before the contract was awarded, which was on the 19th of June.

Q. I show you a letter written June 19th, 1902, addressed to "My dear Chance." I will show you that letter and ask you whether you wrote that letter? (Exhibit No. 78.)

A. Yes, sir.

Q. I will ask you to read it, because I am going to ask you some questions on this letter, and your counsel might say that you are entitled to look at it before you answer the questions.

Mr. WORTHINGTON: That is the letter of June 19th?

Mr. BAKER: June 19th.

By Mr. BAKER:

Q. Did you write that letter to your Company?

A. Yes, sir; I did.

Q. And I will ask you whether you wrote it on that date,—June 19?

A. I should say so, yes.

Q. In this letter you state: "Will you be the bearer of the good news to Mr. Trask that we have been awarded the leather satchel contract. There will be about, as nearly as I can make out, at least 10,000 satchels a year, or probably 12,000. This contract is for four years, beginning July 1st next, so that at 25 cents per satchel, profit, the Company will have a revenue of $2500 a year for four years, from this source." That was not so, was it?

A. That they would have a revenue of that much?

Q. Yes.

A. It was so that they would surely have a revenue of that.

Q. It was not so that they were to get 25 cents per satchel profit, was it?

A. It was so until the other contract was signed, yes, sir.

Q. I say, at the time you wrote this, you and Mr. Lorenz had agreed to change the first contract?

A. We had.

Q. Yes. The first contract was out of it, and you were to have a new contract?

A. I did not say it was out of it.

Q. You had agreed to change it, had you not?

A. Yes, sir.

Q. So that when you wrote your Company and told them that for the next four years they would get 25 cents per satchel profit, you told them an untruth, did you not?

A. No, sir; I did not.

Q. How do you justify that statement with what you have stated about the new contract?

A. I justify it—will you please read the paragraph?

Q. I will: "I make it out at least 10,000 satchels a year, and probably 12,000. This contract is for four years, beginning July 1st next so that at 25 cents per satchel profit the company will have a revenue of $2500 a year for four years from this source."

—. Yes, sir; that is all right.

Q. That is all right?

A. Yes, sir; it is.

Q. When you were writing that you were treating the first contract as being in effect?

A. It was in effect; it was signed by both parties and the other was not.

174 Q. It was to continue for four years?

A. I did not say it was to continue for four years.

Q. You say so here—"so that at twenty-five cents per satchel profit the Company will have a revenue of $2500 a year for four years from this source."

A. They would, at 25 cents.

Q. Yes.

A. And that was to run for four years, so far as I knew, until the Company signed the second contract, which they knew at that time nothing about, it had not been taken up with them.

Q. Why did you not tell them in this letter about the new contract?

A. Because it had not been definitely agreed upon by Mr. Lorenz.

Q. Well, now, what was there—you said a while ago it had been definitely agreed upon, did you not?

A. I mean by that, executed. When he got it in September he did not sign it then; he took it off to Toledo with him. He said he wanted to look over it.

Q. Well, when you wrote this letter to your Company of June 19th, instead of referring to the contract which you and Mr. Lorenz had agreed to substitute for another contract, why did you not tell your Company about the second contract?

A. I did not tell them about it; one reason that I can think of just now would be this: that I had a contract then which was executed, which had been submitted to Mr. Trask and Mr. Chance, and agreed upon by them, for 25 cents. I had that contract, and I had also, at the time that I wrote that letter, an understanding, as you state, and as has been fully explained, with Mr. Lorenz, about the

second contract. I had also, from Mr. Lorenz, information about the prices, as to the cost of the manufacture, which I did not know positively to be a fact, which I had not substantiated; and I was not going to write to that Company that they could make fifty cents a bag before I knew positively that they could make fifty cents a bag, and before they had seen the second contract, and before it had been submitted to them. I took that up with them personally when I went to New York.

Q. Yes. Now, the last paragraph of the letter reads this way: "Our man Lorenz says he will make more than the Company out of the contract; and while I doubt that, it seems to give additional reason for believing the Company's profit of 25 cents is certain."

A. That confirms exactly what I have just stated.

Q. It does?

A. Yes—that I did not know positively, and that he believed that he would make more than twenty-five, and that confirmed the statement that our profit of 25 cents was sure, inasmuch as he thought he would make much more.

Q. Now, Mr. Crawford, although you had agreed with Mr. Lorenz to substitute the first contract with the second contract, and all of that had been agreed upon prior to June 19th, 1902, still you wrote the Company this letter, a part of which I read to you? Is that right?

A. That is right.

Q. Yes.

A. Except that I have not said that the second contract was to absolutely wipe out, as you have explained, and take the place of the first one.

Q. Well, what was it to do?

A. It was to do just what it *chose* on its face.

175 Mr. WORTHINGTON: The second contract says the first contract shall remain in force except as modified by the second one.

Mr. BAKER: Yes.

By Mr. BAKER:

Q. Under the second contract, or under the contract that you and Mr. Lorenz had agreed upon before he left Washington prior to June 19th, was the Company to get 25 cents a satchel, sure?

A. I had every reason to believe that they would, from his representations.

Q. I ask you, under the contract, whether the contract was to specify that they were to receive 25 cents a satchel?

A. The first contract was, and that contract was in force until the second contract was entered into and executed.

Q. Do you understand my question?

A. I think I have answered it.

Q. I ask you whether, under that second contract, at the time that this letter was written, there was a paragraph either in it or to be put in it that was to give your Company twenty-five cents per satchel,

sure, without regard to what Mr. Lorenz got or what anybody else got?

A. I should say it would have that effect.

Q. I am not asking you the effect; I am asking you whether there was anything in the contract.

A. I would have to read it all over.

Q. Well, I will hand you the contract, and let you read it over.

Mr. WORTHINGTON: Oh, well, I submit, your Honor, that we know what is in the contract; we do not have to ask the witness.

Mr. BAKER: Of course; and the witness knows what is in the contract, too.

Mr. WORTHINGTON: Well, I do not know whether he does or not.

By Mr. BAKER:

Q. So that when you were writing this Company about the first contract to be in effect for four years, but the fact of Mr. Lorenz believing he would make more being an additional reason for believing the Company's profit of 25 cents is certain, you in truth had agreed with Mr. Lorenz to make another contract and to change those figures?

A. Yes; and I felt that whatever amount was allowed the Postal Company would be sufficient to manufacture the bags and give them that 25 cents.

Q. But you did not tell them how you felt, did you?

A. Yes; I told them right there, in that paragraph.

Q. Well, were you not talking about the first contract when you were writing them this letter?

A. I do not think I mentioned any contract in that letter.

Q. You said, "This contract is for four years."

A. That is the Government's contract.

Q. When you said "beginning July 1st next, so that at 25 cents per satchel profit the Company will have a revenue of $2500 a year for four years from this source," you were referring to the Government contract, were you?

A. This contract for four years—yes.

Q. Well, the sentence is all one, Mr. Crawford.

A. Yes—well, just read the first part.

176 Q. will read it.

Mr. WORTHINGTON: Which letter are you upon now?

Mr. BAKER: I am talking about the letter of June 19th.

By Mr. BAKER:

Q. I read this sentence to you:

"This contract is for four years beginning July 1st, next."

A. Well, that means the Government contract began July 1st.

Q. Yes; that means the Government contract (reading:) "So that at 25 cents per satchel profit"——

A. The subject which I had written them about, and the contract which they had signed, the first contract with Lorenz, covered that; and that was what was in their minds, what they knew about.

Q. (Reading:) "The Company will have a revenue of $2500 a year for four years."

A. Yes.

Q. That was the first contract?

A. Yes; so that at that profit of 25 cents they would have that.

Q. Now, when you were writing over here, when you said, "Our man Lorenz says that he will make more than the Company out of the contract," you were referring to the first contract, were you not?

A. Well, I was referring to both, because we had gone over both then, and he still thought he would make more; he thought he would make more than the Company under the second contract.

Q. You were referring to both when you wrote that, were you?

A. I had both in mind.

Q. Then why did you add this: "And while I doubt that, it seems to give additional reason for believing the Company profit of 25 cents is certain?"

A. Well, because I thought it would take nearly all the amount to manufacture the satchels and give the Company 25 cents; but I did not know for sure.

Q. Well, I know; but if Mr. Lorenz, under that second contract which you had already agreed upon, was to get so much for making the straps, you did not take that into consideration when you told the Company that?

A. Well, the Company was to get so much, on the other hand, and there was no way for me to tell, not having a knowledge of the matter, whether the Company out of their "so much," was going to make more than 25 cents.

Q. Or less?

A. No; I thought it gave me additional reason——

Q. Or less, I say?

A. No; it gave me additional reason for believing that their share of 25 cents was certain, because Mr. Lorenz said that he was going to make so much more.

Q. Well, is it not a fact that you wrote the Company in one of these letters and said Lorenz wanted more than half?

Mr. WORTHINGTON: Show him the letter, please.

Mr BAKER (to Mr. Mayer): All right; get that letter.

By Mr. BAKER:

Q. I show you the letter of April 29th. I read from the first page of that letter:

"As the average selling price for the last contract was under $2.50,
I do not think the profit could be over 20 per cent., which
177 would be 50 cents per bag. I therefore suggested that we
would agree to giving him all he would make per bag over 25 cents, which was to be paid to us first. This is a sure proposition, I thought, for us, as the price of materials may increase during the four years of the contract. Of course he may manage to make more than 50 cents per bag—he evidently expects to do so as he accepted the proposition to pay 25 cents per bag out of the first profits, and

insisted on a larger percentage than one-half before I made the above proposition." You wrote the Company that?

A. I did.

Q. Yes. Now, when you say here that "Lorenz thinks he will make more than the Company out of the contract," you were referring to the portion that would come to Lorenz under the first contract, were you not?

A. Lorenz, when he made that statement to me, knew about the second contract; he thought that he would make more, in this other letter down here.

Q. When he made what statement to you?

A. The statement that he makes in that letter there. That is a statement—that letter is written upon what Mr. Lorenz said, that paragraph down there.

Q. You mean "our man Lorenz says he will make more than the Company?

A. Yes.

Q. "Out of the contract?"

A. Yes.

Q. Yes, "and while I doubt that, it seems to give additional reason"——

A. I doubted it because I thought it would cost more to make these things, from the bids I had obtained.

Q. But why do you say, "It seems to give additional reason for believing the Co. profit of 25 cents is certain?"

A. Well, it gives additional reason for believing that the thing is certain if Lorenz's information was correct, and he thought he was going to make more.

Q. Now, at the time Mr. Lorenz signed the second contract the Company had not yet signed it, had it?

A. No; I do not think they had.

Q. And you mailed the second contract to Mr. Lorenz from Hartford in this letter dated September 25th?

A. That is my recollection.

Q. Yes. Now, yesterday you stated that at the time you mailed it your best recollection was that it was dated; is that right?

A. Yes, sir.

Q. What date?

A. (After a pause): Some time in August.

Q. What day in August?

A. Well, I was just thinking refreshed my mind from the fact that I saw a receipt that I had at him for the first bill for the satchels.

Q. Yes.

A. According to the contract of August 7th.

Q. Yes. And do you want to say that this contract was dated the 7th day of August, 1902, when you mailed it to Lorenz on the 25th day of September?

A. Yes, sir; I should say it was, because it had been mailed to me previous to that date. It had been mailed to me previous to September.

Q. Who prepared this contract?
A. Mr. Polk.
Q. When you received the first contract from Mr. Polk there were no typewritten dates in it, were there—the first contract?

Mr. WORTHINGTON: You mean the one of June 3rd?
178 Mr. BAKER: Yes; the one of June 3rd.

A. No; I remember now, that was written in.

By Mr. BAKER:

Q. That was written in; and you are positive now that when you received this contract it had a date written in typewriter?
A. It had a date written in typewriter.
Q. Yes; and when you mailed it to Mr. Lorenz it had a date written in typewriter?
A. Yes, sir.
Q. Now, when did you get it back from Mr. Lorenz?
A. That I do not remember. He was going to New York, and I wanted him to take it with him; and he said: "No; I am going on another trip about something else, and just mail this out; I am going to Toledo very shortly, and I want to go over it thoroughly before I sign it, and go into it in detail; and then I will sign it and send it back to you." And it came back, but I could not say exactly whether it was within a week or two weeks, or——
Q. About what time was it signed by your Company, the Postal Device & Lock Company?
A. Well, I should say it was signed some time the latter part of October.
Q. And you are positive about that?
A. That is my best recollection about it. It may have been November.
Q. And upon what do you base that recollection?
A. Well, because I was in Hartford a good deal, and not in New York much, and I had not been over that contract in detail with them; and my recollection is that I took it down there.
Q. Now, when you got back from Mr. Lorenz, what was the date on the contract?
A. I suppose it was the same date.
Q. You suppose—you do not know anything about it? You did not examine it to see whether there was any erasure on it, or what, at that time?
A. I should say there was not any erasure.
Q. You should say now there was not. Now, when you took it to your Company to New York to have it executed, was there any erasure?
A. I do not remember about that.
Q. When you got it back from your Company in New York, was there any erasure?
A. I do not remember about that.
Q. When did you first discover the erasure on the contract?
A. I discovered that—I did not discover it; it was discovered when

I had delivered the contracts over to the Government there, when Mr. Bristow read them.

Q. And up to that time you did not know there was any erasure on this contract?

A. No; I had put them away.

Q. Now I will ask you whether you erased the date on this contract?

A. I did not.

Q. You did not. Now, the day you delivered them to the Department you were questioned as to the date on which this contract was executed, were you not?

A. I do not remember whether I was or not.

Q. You do not remember whether you were or not. Do you remember signing this note at the bottom of the contract?

A. I remember that perfectly.

179 Q. You remember signing that perfectly. That note is untrue, is it not?

A. That note is not a fact.

Q. Now, Mr. Crawford, I will read that and ask you some questions about it. "The foregoing contract was prepared during the month of July, 1902"—that is correct, is it not?

A. The foregoing what?

Q. "The foregoing contract was prepared during the month of July, 1902." That is correct, is it not; or was it prepared in June, 1902; or do you know when it was prepared?

A. Well, I did not prepare it myself, so——

Q. So you do not know when it was prepared?

A. (Continuing:) I could not state that accurately.

Q. (Reading:) "And was executed by all the parties during either the month of July or the fore part of August, 1902." That is absolutely false, is it not?

A. Absolutely untrue.

Q. Yes; absolutely untrue—"and before any order for satchels had been placed with the Postal Device & Lock Company." That is absolutely false, is it not?

A. That is untrue.

Q. Yes. Now, why did you make a false statement of that kind to the Department?

A. I did not make the statement.

Q. Well, you signed it, did you not?

A. I did; and I am very sorry that I did.

Q. I should say so.

A. And anything you ask me about, that is false, I will state that it is false, and I admit it, no matter what it is.

Q. Now, "The date was erased for some reason not remembered." That is untrue, too, is it not?

A. No; I cannot say that that was untrue.

Q. Well, you do not know the reason why the date was erased? You did not know anything about the erasure until that day, did you?

A. No; but I did not write that memorandum.

Q. But you signed it, did you not?

A. Yes; I did sign it, but I did not write it.
Q. And you read it, did you not?
A. I do not think that I did.
Q. You do not think you did; you sat down there and just signed the thing at random, did you?
A. Yes, I just signed it—not at random, no; not at random.
Q. Who was present when you signed this paper?
A. My recollection—may I not state just the circumstances under which it was signed, so that I may state it clearly, without answering each question separately?
Q. Yes; certainly.
A. Because you have been over it thoroughly, and I just want to put it all together. When we were there—when I say "we" I mean the inspectors and I in the Post Office Department, in Mr. Bristow's office—and when I came back to that office to hand up that contract which I had before referred to to them, before the examination, stating that I had this contract, when I delivered that contract up to Mr. Bristow, I was talking to Mr. Bristow or some other inspector; there were several in the room there, and Mr. Fosnes, as I remember it, took one of the contracts—you remember they were in duplicate; there were two.
Q. Yes.
A. So that Mr. Bristow had one and Mr. Fosnes or some other inspector had another. He went off to a side of the room with
180 Mr. Polk; they had allowed Mr. Polk to come in this time, and they went off to the side of the room and went over this contract in some respects; I do not know—I did not hear the conversation; and the next I knew of it was while I was sitting there talking to Mr. Bristow, Mr. Fosnes comes over with this contract and this note or footnote there at the bottom in typewriter. He had had it typewritten so far as I know; and it was signed by Mr. Polk; and he said "Mr. Crawford, I want you to sign this;" and I glanced at it——

Mr. WORTHINGTON: Who said that?

The WITNESS: Mr. Fosnes, my recollection is. He said "Mr. Crawford, I want you to sign this; Mr. Polk has been over this matter." I read, as I remember it, about the first line, and saw that it said that it was executed in June or July, but it did not make any very definite impression upon my mind. I could not then think—that had been maybe two years after it had been signed, or some time after the contract had been signed, a year after, perhaps, or some time, and I did not remember exactly, and that was why I hesitated about it; and Mr. Polk said: "Why, Mr. Crawford, that is all right;" he said, "I have signed that. Mr. Fosnes wants that signed." He said: "Sign it; that is all right." Polk was under a misapprehension, because he——

Mr. BAKER: I am not asking you about Mr. Polk; I am asking you——

Mr. WORTHINGTON: Yes; let Polk take care of himself, and tell him about yourself.

Mr. BAKER: Yes; charity will take care of him, so you need not take care of him.

By Mr. BAKER:

Q. Now will you continue and just state the circumstances?

A. I did not hear what you said.

Q. I say, just go on with the circumstances, and do not state the impression on Mr. Polk.

A. Well, I had great confidence in Mr. Polk. Mr. Polk is a very honest man and a very competent man.

Q. Did I ask you that?

A. No; but you said something about "charity taking care of him."

Q. Yes. Well, now, I will ask you whether you will go on with the circumstances under which you signed this?

A. Well, I have stated about the circumstances. They brought that back, both of them, and Mr. Polk had signed it, and I had confidence in Mr. Polk, and signed it right there, because I was asked to sign it.

Q. Yes; all right.

A. And I did not read it over first.

Q. Now, when you stated down there——

A. I did not stop to think about it.

Q. (Continuing:) That the date was erased for some reason not remembered, you did not know until that time that the date was erased, did you—until that day?

A. That day—yes, that is my recollection.

Q. Well, why did you state there, Mr. Crawford, that the date was "erased for some reason not remembered?"

A. I did not state it. The memorandum was written there,
181 and, as I have explained, I signed it without reading the whole thing through, on Mr. Polk's statement that it was all right, that he had signed it and gone over it with Mr. Fosnes; and they had been off talking in a corner of the room for some time, and I never questioned it at all, but just signed it.

Q. Then you are by your statement holding Mr. Polk responsible for this statement?

Mr. WORTHINGTON: Well, now, I object to his asking any such question as that.

A. No; I am not holding Mr. Polk responsible; I am holding Mr. Fosnes responsible——

By Mr. BAKER:

Q. You are?

A. (Continuing:) For going off and getting that information and jotting it down on the typewriter quick, and then handing it around to have it signed. Mr. Polk was honest in it, I have no doubt, when he signed it and read it.

The witness further testified that he wrote the letter dated October 22nd and that there was inclosed therein the original and a typewritten copy of the bill, showing the amount coming to Mr. Lorenz; and that in reply he received back both of the bills with a letter, the bills not being receipted or signed; the witness identifies the letter as

the one already offered in evidence acknowledging receipt of the draft. Thereupon the witness was asked the following question:

Q. I will ask you to look at this letter and state whether or not you say anything in it about enclosing the receipts?
A. No; I do not mention "receipt."
Q. You do say, "Please formally acknowledge receipt of check in full payment 5000 lot by return mail?
A. Yes, sir.
Q. Now, in that you had made up a receipt which you sent to him to sign?
A. Yes, sir.
Q. And sent it in this letter?
A. That is my recollection.
Q. And you say nothing about it in the letter?
A. Well, I make a reference there—that is a formal receipt; I sent him a formal receipt.
Q. You say: "Please formally acknowledge receipt." You meant for him to do that, did you not?
A. On the receipt?
Q. Yes.
A. I sent him a form of receipt, a regular form of a receipt, for a formal acknowledgment.
Q. Now, in this letter there were, as you say, the two receipts, an original and a carbon?
A. Yes, sir.
Q. A formal receipt, as you call it?
A. That is my recollection.
Q. And the check?
A. That is my recollection.
Q. And nothing else?
A. And nothing else.
Q. You add this memorandum: "Please return this for copy, or send copy."
A. Yes, sir.
Q. Why did you write that?
A. Because I was in a hurry and did not make a copy. It was not my custom to make press copies.
182 Q. You had no memorandum pinned on to this in regard to a return to you of the proportion that was coming to you of this check?
A. I most positively did not have any such memorandum.
Q. No memorandum at all; you are positive about that?
A. No memorandum about those receipts, about this money coming back to me. I had these other enclosures.
Q. Now, in the other two letters that you wrote him, enclosing the other two drafts, you did have a memorandum?
A. I did.
Q. Pinned on to the letter?
A. That is my recollection.
Q. Yes—pinned on to the letter and telling him what to do, or how to send the portion coming to you.

A. Simply telling him, because of the trouble in collecting this bearer draft, to send it in one case by express, and in the last case, in March, or February, when it was that I sent him the remittance, to send by check to William G. Crawford.

Q. Now, was the memorandum in the second letter and the memorandum in the third letter typewritten or not?

A. I do not remember about that.

Q. You do not remember anything about it, whether it was written or typewritten?

A. I could not state positively, now.

Q. You could not state positively anything about it. I notice in this letter you say, "over"; and on the other side there is written matter signed "W. G. C." That is your handwriting? is it not.

A. "P. D. & L. Company"—Postal Device & Lock Company "per W. G. C."

Q. Yes; and you say this: "We are very anxious to have some more straps for the next delivery, shortly, say about 2,000 straps to be followed by 2,000 more in a few weeks. Please hurry them forward as you did first lot, and oblige,

Yours truly,

P. D. & L. Co.
W. G. C."

This letter is dated October 22nd; that means October, 1902?

A. Yes, sir.

Q. Now, at the time you wrote that, you knew that the Government was furnishing the Lamb strap?

A. I did.

Q. And insisted on furnishing the Lamb strap—is that right?

A. That is right.

Q. Yes.

A. And I knew that I had had the conversation with Mr. Lorenz in Hartford about the straps, and I knew that he had made the proposition that he would furnish the straps.

Q. And you know that was a lie that I have read to you?

A. I knew that that was a joke; it was not intended as a lie.

Q. Well, it is a lie, is it not?

A. I would not call it a lie.

Q. If I would write you a letter when I knew——

Mr. WORTHINGTON: I object to a hypothetical question, your Honor.

By Mr. BAKER:

Q. Well, I say, you wrote him this?

A. Because he understood the facts. If I say something to a man, and he does not know, then I am lying to him; but if I say
183 something to you that—I was going to say something which I will not say—that you knew not to be true; then you would know that it was not a lie.

Q. Yes. So you——

A. (Continuing:) Or intended to state it to you as a lie. If I

told you it was night now, you would know perfectly well that I was not lying, or that I did not intend to lie, because you would know it was not night. And he knew he had not furnished the straps, and he knew that that was a joke, and it was so intended.

Q. This was a business letter you were writing him, was it not? This was a letter on business?

A. Yes, enclosing him that remittance.

Q. Enclosing him a check for over $5,000, out of which you received $1465.34?

A. Yes, sir.

Q. And about which, in the letter you said nothing? Is that right?

A. Said nothing about what?

Q. About your $1465.34?

A. I said absolutely nothing about that; I had seen him three weeks before, and all that had been definitely decided upon, and there was no reason to.

Q. Did I ask you that, Mr. Crawford? I say, in this letter that you wrote him about this business proposition you said absolutely nothing about the $1465.34 coming back to you?

A. I do not see anything in the letter about it.

Q. Now, were you and Mr. Lorenz joking continually about straps?

A. Not joking continually; no.

Q. Well, were you joking about straps?

A. That was the first joke about it.

Q. Well, the fact is there was a joke about it; was there not?

A. That was a joke; yes.

Q. Well, I say, there was a joke about these straps; and was not that a joke?

A. I do not understand what you mean.

Q. Well, I say, here is one joke about them; is it not?

A. I say that I mentioned that as a joke.

Q. Well, now, will you tell us wherein the funny part occurs in this statement, and take and read it, and tell the jury the funny part about it?

A. The funny part of this, to my mind, was that Mr. Lorenz had suggested that he would furnish the straps, and the funny part was that he did not furnish any straps, and that he was very much surprised that he was not to furnish the straps, and, although he had contracted to make straps, that he had not made straps or furnished any.

Q. Now, is it not a fact, Mr. Crawford, that the funny part was that you were paying him for straps which the Government was furnishing, and you were getting off a joke about it?

A. No; it was not.

Q. Is not that the funny part?

A. No; it was not the funny part.

Q. That you and he were beating the Government out of the price of the straps, and that you put this in to be funny; and is not that the joke?

A. That is not the joke. I had absolutely no intention of defrauding the Government about those straps; absolutely none.

184 Q. Is it not a fact, Mr. Crawford, that there is no "funny business" about this letter at all, but that you put it in intending that he should send the letter back, or the copy of the letter back, and you would put it on file among the papers of your Company? That was your intention, was it not—to get a copy of this letter?

A. That was absolutely not my intention.

Q. Well, then, why did you write this—"please return this for copy, or send copy"?

A. Because I had not made a copy of that letter, and I wanted a copy of the letter.

Q. You wanted a copy of the letter; and you wanted the copy to be put on the files, among your papers, did you not?

A. I would have kept it; yes.

Q. And you would have put the joke on the files of your Company, and let your Company come over and look at the letter and see the joke?

A. No; my company did not come over and look at the letters.

Q. It did not?

A. No.

On further cross examination the defendant testified that he received the bearer draft in evidence between October 24th and 30th, and deposited the proceeds of it in the United States Mortgage and Trust Company in New York, and checked against it after a while for his personal account; that at that time he kept a bank account at the Second National Bank in Washington; that he received by express between $245.00 and $250.00 in cash; and that he remembered depositing approximately that amount in the same bank to his personal account; that his signature to the letter of January 15th, 1903 (exhibit 68A) is genuine; that he dictated it, but could not say to whom; that he should say it was dictated here in Washington, but whether at witness's house or office he did not know; that he did not know whether at that time he had a typewriter at his house, or not; that he also dictated and sent the letter of January 20th, 1903, in evidence (exhibit 125); that he dictated the contents of that letter and sent it to Lorenz; that there was enclosed in that letter a check for Lorenz's interest in the contract under that bill; that witness could not say whether the check in evidence, dated January 17th, 1903, for $686.46, was the check referred to, as enclosed in that letter; but that that was about the time that that check would go forward; that he sent three checks in all to Lorenz—the first one in the letter of October 22nd, 1902; that the draft sent Lorenz of $686.46 was the third remittance to him; that witness did not write the slip "Please send New York Exchange," and does not remember dictating it; that according to witness's recollection, the slip sent in that letter read: "Please send New York check" but that that might be the slip.

Thereupon witness was asked:

Q. Where was that letter written?

A. I would say it was written here.

Q. Yes; and you say you do not know anything about this slip?

A. I do not say I do not know anything about it. I say I cannot connect this particular slip with this particular letter.

185 Q. You did have a slip in this letter, however, did you not?

A. I remember sending him word to please send in this form—"please send New York Check," I thought I said.

Q. Instead of "exchange?"

A. But that may be.

Q. This may be the slip?

A. This may be the slip.

Q. At the last trial you testified that this was not the slip, did you not?

A. I do not remember.

Mr. CONRAD: No; he did not, at the last trial.

Mr. BAKER: I am just asking him the question.

By Mr. BAKER:

Q. I show you a letter dated January 17, 1903, directed to George E. Lorenz and signed by Wade Chance, and ask you to examine that letter carefully and state whether or not that letter was enclosed in this letter of January 20, 1903? (handing letter to the witness.)

A. Well, I cannot state positively about that, although this letter says that a letter was enclosed from the President of the Company. I cannot state positively now whether this letter came back and was put in this letter or whether it went forward independently. Sometimes a check or a bill or something like that would go forward independently from the New York Office. This may have gone forward independently. I could not swear positively about that at this time.

Q. (Reading:) Enclosed I send you letter from the President of this Company, which enclosed your check for last Government payment."

Now, this is the last check for Government payment?

Mr. WORTHINGTON: At that time.

The WITNESS: The last check, does the letter say?

By Mr. BAKER:

Q. For Government payment.

A. It does not say the last check, does it?

Mr. CONRAD: Up to that time.

By Mr. BAKER:

Q. Yes. Check for last Government payment.

A. Oh! Last Government payment? I thought you said "last check."

Q. No. That was the check that is referred to in this letter, is it not?

A. I should say that it was, although this letter does not give any date to fix it. I fix it by the date of the letter and the date of the check.

Q. But this is the last check at that time?

A. Yes; that was the last check at that time.

Q. (Reading:) "Enclosed I send you letter from President of this Company?"

A. Yes.

Q. What letter did you send him from the President of the Company.

A. I do not remember about that. I have no recollection about that. Here is a letter from the President of the Company, but I do not recollect whether this letter was the letter which was enclosed in this letter.

186 Q. You do not?

A. No.

Q. I will ask you to look at that letter, examine the contents of it carefully and state whether or not you did not dictate. (Handing letter to the witness.)

Mr. WORTHINGTON: Is that the one signed by Wade Chance?

Mr. BAKER: Yes.

The WITNESS: I have no distinct recollection of that letter, or having dictated that particular letter.

By Mr. BAKER:

Q. Well, I will call your attention to the fact that the letter says: "The last straps sent to our works at Hartford, while accepted by the Government and shipped, seem to be lighter in color and weight than the previous lots. Will you please have this matter brought to the attention of the manufacturers, and notify our Washington office when you forward the receipts enclosed herewith for your signature."

That refers to the straps, the Lamb straps that the Government was furnishing at Hartford, does it not?

Mr. WORTHINGTON: I submit, your Honor, that the witness says he does not remember dictating it. How can he tell what it refers to, except as appears on its face?

The WITNESS: I have no distinct recollection of this letter; and it is the very part that you have read there that I cannot remember about, having written any such thing as that.

By Mr. BAKER:

Q. In this letter here, that you have identified, January 20th, 1903, you say: "My attention was called to the complaint from the factory regarding straps, and I was asked to note the same, sign check and forward the letter from our President."

You knew, long prior to this, that Lorenz had nothing to do with the straps, did you not?

A. I knew that he was not furnishing the straps, yes.

Q. Now, why did you put that in that letter to him? (Handing letter to witness.)

A. Well, I must have put that in because my attention was called to the fact that the factory made some complaint about the straps.

Q. Well, what did you write to Lorenz about that for? He was not furnishing the straps, was he? The Government was furnishing the straps.

A. Yes.

Q. Why did you not go to the Government about it?
A. I can draw an inference. I do not remember distinctly, but I can draw an inference as to why I wrote that.

Mr. WORTHINGTON: I object to the witness stating his inference, your Honor.
Mr. BAKER: So do I. So that we agree on that, Mr. Worthington.
Mr. WORTHINGTON: What is that that you say?
Mr. BAKER: You object to his stating an inference?
Mr. WORTHINGTON: Yes, I do.
Mr. BAKER: So do I.

187 By Mr. BAKER:

Q. This letter of January 20th, 1903, you stated, I believe, was written in Washington? (Exhibiting letter to the witness.)
A. It appears to have been.
Q. And I ask you whether this reference to straps was a continuation of the joke of October 22?
A. As I say, I can draw an inference about why that was placed there; but I cannot state positively.
Q. I will ask you whether or not you did not dictate this letter of January 17th, 1903, signed by Wade Chance, and send it to New York for him to sign?
A. No, sir; I have no recollection of having written that and sending it to him to sign.
Q. I will ask you if you did not have that letter written on exactly the same typewriter on which you had this letter written (Indicating)?

Mr. WORTHINGTON: Identify the letters, so that the record will show them.
Mr. BAKER: I refer to the letter of January 15th, 1903, being exhibit No. 68A and to letter dated January 20th, 1903, being our exhibit No. 125.

The WITNESS: As I say, I have no recollection.

By Mr. BAKER:

Q. This letter here is a letter from your Company, calling Mr. Lorenz's attention to straps, which you admit Mr. Lorenz was not furnishing?

Mr. WORTHINGTON: Are you asking him to make a comparison of the papers, and to express an opinion as to whether they are written by the same typewriter?
Mr. BAKER: I ask him that, yes.
Mr. WORTHINGTON: I object to that question, your Honor.
The COURT: The objection is sustained, on that ground.
Mr. WORTHINGTON: I do not object if he asks his recollection about it, of course.

By Mr. BAKER:

Q. I ask, as a matter of fact, to have you look all through these letters, and see if you cannot refresh your memory and state whether

or not you did not write them all, or have them all written on the same typewriter?

A. No, sir; I cannot recollect that.

Q. I will ask you whether or not you identify this memorandum, which reads "Please send New York Exchange" as being written on the same typewriter as this letter of January 20th, 1903?

A. I have no positive recollection as to that. As I say, I thought I had said "Please send New York check."

Q. Will you state positively that you had nothing at all to do with the dictation or the writing of the letter of January 17th, 1903?

Mr. WORTHINGTON: From Chance?

Mr. BAKER: Yes; from Chance.

The WITNESS: I have no recollection as to that.

188 By Mr. BAKER:

Q. I will ask you whether or not you ever had your Company write a letter to Mr. Lorenz calling Mr. Lorenz's attention to the fact that he was to furnish the straps, or that he was not furnishing the proper straps?

A. I have no recollection of that.

Q. Mr. Crawford, you remember the date of the contract of August 7th, that was obliterated, I believe—you said it was dated August 7, the contract between Lorenz and yourself, the second contract?

A. What is the question? Do I remember that it was the 7th?

Q. You remember you said that?

A. I remember I stated, and I think I stated how I remembered that, from finding the receipts that refer to it. Otherwise I never would have known the date. It was a mere accident that I found those receipts.

Q. You remember you stated that you never wrote to Mr. Lorenz or to your Company any statement in regard to this contract, or either one of these two contracts, that was untrue; is that right?

A. Did I state—what is the question?

(By request, the stenographer repeated the pending question.)

The WITNESS: That is right. I said that I never wrote any such statement with the intention of stating anything that was untrue.

By Mr. BAKER:

Q. I will ask you to look at the letter of January 17th, 1903, signed by Wade Chance, and ask you if the statement in that letter in regard to the straps is not untrue? (Handing letter to the witness.)

A. Well, I have no recollection of that letter.

Q. You have no recollection of it at all?

A. No.

Q. You did not write it, or have no recollection of having written it?

A. No, sir.

Mr. WORTHINGTON: Do you mean that you did not write it, or do you mean that you have no recollection of having written it? Your answer "Yes" to both questions.

The WITNESS: I answered the last question.

By Mr. BAKER:

Q. I will ask you whether or not——

The COURT: I do not know which he means to say, and I do not believe the jury do.

Mr. WORTHINGTON: He asked two questions, and the witness said "Yes."

The WITNESS: My answer really was "no," that I had no recollection of writing.

(By request, the stenographer repeated the question of Mr. Worthington, as follows:)

"Do you mean that you did not write it, or do you mean that you have no recollection of having written it?

Mr. BAKER: I will put the direct question to you:

By Mr. BAKER:

Q. Examine that letter, examine its contents, and state whether or not you wrote that letter, dictated it, or had it written.

189 (Handing letter to the witness.)

A. I have no recollection of having dictated it or having had it written.

Q. I will ask you to look at the subject-matter of the letter, it being addressed to Mr. Lorenz, in regard to straps, and state whether or not by looking at the subject matter you can say whether or not you ever dictated or had prepared that letter for your Company to send to Mr. Lorenz?

A. It is the wording of that paragraph that makes me doubt that I wrote the letter. I have no recollection of having written the letter or having dictated the letter.

Q. Did you ever dictate a letter for your Company to go to Mr. Lorenz, containing the subject-matter of straps?

A. I have no recollection of having written a letter containing the subject-matter of straps, as stated there.

Q. Not as stated there. I will ask you: Did you ever?

A. You have one there about straps.

Q. No; did you send one, yourself? I ask whether you ever dictated a letter for your Company, to be sent?

A. I have no recollection of ever having dictated a letter to be sent to Mr. Lorenz about straps, for the Company.

Q. Will you state positively that you did not write that letter?

A. I have no recollection of it, and if I was forced to say yes or no, I should say no, not having any recollection of having written such a letter.

Copies of said letters of January 17, 1903, (Exhibit 124), January 20, 1903 (Exhibit 125), and January 15, 1903, (Exhibit 68-*a*), are herewith filed and attached to the original bill of exceptions as Exhibit T, and made a part thereof. And it is agreed by counsel for the respective parties that the original letters shall be produced at the hearing of the case in the Court of Appeals by the United States District Attorney.

Q. Mr. Crawford, you have testified here in regard to informing Mr. Chance of your contract with Mr. Lorenz, as to receiving money from Lorenz. You testified on this subject at the last trial, did you not?

A. The subject of my receiving these remittances from Lorenz?

Q. Yes.

A. Yes, sir.

Q. You testified, also, as to whether or not you informed Mr. Chance of that fact?

A. Yes, sir; I think I did.

Q. And Mr. Chance was present at the last trial, was he not?

A. Oh, yes.

Q. He was here and testified?

A. Yes; he was here.

Q. I will ask you whether or not you are positive that you told him.

A. Told him what?

Q. That you were receiving something back from Mr. Lorenz.

A. I am positive that I told him, in his office in New York, that I was representing Mr. Lorenz in this matter, being paid by him.

Q. Are you positive that you told him in New York that you were receiving money from Mr. Lorenz?

A. I should say that I did tell him that.

Q. I am asking——

A. My recollection is that I told him that I was representing Mr. Lorenz.

190 Mr. CONRAD: That does not answer the question.

The COURT: Answer that yes or no.

(By request the stenographer read the pending question, as follows:)

"Q. Are you positive that you told him, in New York, that you were receiving money from Mr. Lorenz?

The WITNESS: Yes, sir.

By Mr. BAKER:

Q. You are positive?

A. Yes.

Q. When Mr. Chance was here, and you were interrogated on that subject——

Mr. WORTHINGTON: Give me the volume to which you are referring.

Mr. BAKER: Page 1128.

By Mr. BAKER:

Q. Were you not asked this question:

"Q. Mr. Crawford, what recollection if any have you as to whether or not at any time you communicated, verbally, with either Mr. Chance or Mr. Trask, the matter of these moneys which you received or were to receive back from Lorenz.

A. To the best of my recollection I mentioned to Mr. Chance about this strap being furnished—Mr. Lorenz not having to make

it,—and that I was getting a fee from Mr. Lorenz. I am not trying to quote the exact language, but that is the substance of it.

"Q. To pass to another matter, now——

"Mr. BEACH: We did not quite fix the time of that.

"By Mr. WORTHINGTON:

"Q. Very well; fix the time as well as you can.

A. To the best of my recollection, it was before I submitted that book. I cannot be absolutely certain as to that date; the time of it."

Did you so testify in the last trial?

A. That is my recollection.

Q. And now, why do you change that and say now that you are positive, when you said at the last trial that to the best of your recollection you mentioned the matter to him?

A. Because I was forced to say that I was positive.

Q. Then you are not positive? You are not positive about it?

A. I will have to answer you by saying that that is my recollection, that I told him. If I am pushed to an answer yes or no, I should say yes.

Q. That you are positive about it?

A. Because it is the best of my recollection.

Q. Just to the best of your recollection?

A. No.

The COURT: You cannot be pushed to an answer yes or no. Nobody will push you to answer yes or no. You do not have to answer yes or no.

191 By Mr. BAKER:

Q. I will ask you why you state here that you are positive that you had the conversation and when Mr. Chance was here present testifying in the cause, you merely said it was to the best of your recollection?

A. I shall have to ask the stenographer to look back, and I think that he will find that I answered to the best of my recollection, and that I was told to answer yes or no.

The COURT: Yes, because the question did not permit of any other answer. That is the only circumstance under which anybody is ever required to answer a question yes or no. The question was whether or not you were positive. Either you were positive or you were not. You had the option of saying what the fact was, whether you were or were not. That is all there is of that.

By Mr. BAKER:

Q. What do you say to the question that I put to you?

(By request of the witness, the stenographer repeated the pending question, as follows:)

"Q. I will ask you why you state here that you are positive that you had the conversation, and when Mr. Chance was here present, testifying in the cause, you merely said it was to the best of your recollection?"

The WITNESS: Well, I have nothing to change about that.

By Mr. BAKER:

Q. You heard Mr. Chance's testimony, when he testified in this case at the last trial?

A. Yes, sir; I heard him testify?

Thereupon the witness admitted that at the first trial when he was asked by counsel for the government to explain why Lorenz remitted him twenty-five per cent., he answered as follows:

"Mr. Lorenz was subject to an adjustment. Under that contract with Mr. Lorenz—the contract speaks for itself—he was to be held accountable for these straps. He was actually, and I believe really and honestly intended to furnish straps. Under the furnishing of the Lamb strap, which was forced upon us by the Department, he was subjected to an adjustment. If I paid it before that adjustment was made I was running a little risk. I realized that. On the other hand, he was in the oil business and other lines of business, and he wanted money. He wanted ready cash, and he wanted it right off; and he renewed the proposition about paying me, a proposition which had been made me before, about paying me to look after his interest. He renewed that proposition in consideration of my sending him prompt remittances; and that was the only consideration—twenty-five per cent. for prompt remittances. I readily assented to that, because the whole burden of the conduct of this business had been placed upon me, and Mr. Lorenz had nothing to do, so I agreed to it immediately."

On further cross examination the witness admitted that he took from the letter book of the New York Leather and Paint Company page 121, and made the erasure of the figures in the index
192 referring to that page; that the letter of April 18th, 1902, in evidence, is the one that he took from the files of that Company; that he said to the inspectors in New York when they asked him "what part of this money was paid to Mr. Machen" that he did not know of any money being paid to Mr. Machen; that the money was paid to Lorenz, and he did not know what disposition Lorenz made of it; that that statement was true; that witness did not know what disposition Lorenz had made of the amounts—the total amounts; that he knew that he was getting a part but that that was not the disposition made of the $5,000.00; that the inspectors did not ask him that; that he did not know what Lorenz did with the $5441.35; that he knew that he sent witness $1465.34; that he did not tell the inspectors that, and they did not ask him that; that he did know what Lorenz did with a part of it; that he did not intend to deceive the inspectors; that he answered every question the inspectors asked him; that his statement to the inspectors that he did not know what disposition Lorenz made of the money sent to him was a voluntary statement on witness's part.

On re-direct examination the witness stated that he had nothing to do with Chance being away at this trial, having had no communication with Chance in any way whatsoever since he left America; that when he wrote to his company the letter of June 19th, 1902, in evidence, he had not taken up the subject of the second contract

with Lorenz with the company, and they, therefore, had not agreed to it.

Thereupon counsel for the defendant exhibited to the defendant the letter of A. S. Worthington to John Aspinwall, dated December 8th, 1903, hereinbefore referred to.

The witness was interrogated as follows:

Q. That letter was sent by your authority?

A. What is that?

Q. The letter I wrote to Mr. Aspinwall after you got this letter from him complaining about your taking those letters away?

A. Yes, sir; I was in your office at the time, and brought you his complaint.

Q. And this is the letter which he wrote back to the firm of Worthington, Heald & Frailey?

A. Yes, sir; it is.

Mr. WORTHINGTON: Now, your Honor, I offer this correspondence in evidence. When I offered it in evidence on the cross-examination of Mr. Aspinwall, I think it was, it was ruled out, on the ground that it was not proper for me at that time to put in my proof. I offer it now.

Mr. BAKER: We object, as far as it is——

The COURT: The objection is sustained.

Mr. WORTHINGTON: I do not want to re-argue the matter, but I would like to make a statement, that I may see that your Honor fully apprehends what I mean. This letter of December 7th, 1903, from Aspinwall to Crawford, charges him with taking away without leave his letters. I offer to show that as soon as Mr. Crawford was informed that that charge was made, he, through his counsel, denied it.

193 The COURT: That is not the point. If he denied it himself, he could have proved it; but you cannot prove that he got somebody else to do it for him.

Mr. WORTHINGTON: Very well. I reserve the exception, then, your Honor; and in order that that may be clear, I offer in evidence, separate from the other correspondence, the letter which he says——

The COURT: Besides, the proffer which you make does not dispute the fact at all that he took the letters.

Mr. WORTHINGTON: Oh, no; I am not disputing the fact that he took the letter. I am not disputing the fact that he took the letter, your Honor. I am disputing the fact that he took it without leave.

Mr. CONRAD: Without leave?

Mr. WORTHINGTON: Yes, sir—why, that is what I say in my reply; have you not read that?

Mr. CONRAD: I have read that.

Mr. WORTHINGTON: Very well.

Mr. CONRAD: You mean that he took it with leave?

Mr. BAKER: Without leave, he said.

Mr. WORTHINGTON: I say, I am disputing the fact that he took the letter of the 18th of April, which you referred to here, without leave; and I — offering to show that as soon as it was known that he

was charged with taking it without leave, through his counsel he denied the fact.

(At this point, by direction of the Court, the stenographer read aloud the offer of Mr. Worthington just set forth.)

The COURT: You say you dispute the fact that he took it without leave. If you can prove that he had leave to take it, you are entitled to prove it; but I do not see anything in this letter of yours that tends to prove that.

Mr. WORTHINGTON: Very well, your Honor.

By Mr. WORTHINGTON:

Q. Now will you state what, if anything, had happened between you and Mr. Aspinwall. Did you see Mr. Aspinwall before you took this letter of April 18th?

A. Yes, sir.

Q. How long before? Just tell the circumstances so far as they related to your getting access to the letters and taking it?

A. Well, I found that I had several letters missing; and I, while on a trip up north, went up to the factory at the office of the Fabrikoid Company and called on Mr. Aspinwall and told him about this indictment against me, and that I had been looking over my correspondence in order to be able to show everything, and that I found a great many things missing, or some things missing; and I asked him if he would give me permission to go over his files and get what I wanted. He sent for a clerk, as I remember it, and gave me a room next to his office on the same floor that was a file-room, nothing else in it. I was brought these files in this room, and I was there myself, and went over them alone; and I found some of the information about letters, took some memorandum of dates of letters, and about the contents, and what they referred to; and when I came to
194 this particular letter in the book which I had forgotten about altogether, did not remember at all, why I deemed it of such great importance, because——

Mr. BAKER: I object.

The COURT: Can he not state the circumstances, without going into these matters?

Mr. WORTHINGTON: I want him to state this, your Honor—that is, unless your Honor rules that it is incompetent, of course; I want him to state not only what took place, but I want him to state his intention, and the reason for taking the letter.

Mr. BAKER: Oh, no; I object to that.

Mr. WORTHINGTON: And I want to have him state whether he took this evidence with the intent to suppress it or to destroy it, or with intent that it might be preserved to be presented to a jury when his day of trial should come. I offer to show that by the witness, and let him say which it was.

Mr. BAKER: I object to that, if your Honor please.

Mr. CONRAD: Well, the object, the purpose to which he proposed to apply these papers, how he proposed to use them, has nothing, in my judgment, to do with the question of the taking. He may have done a wrong thing from a good motive. He may have wanted

to put these papers to a legitimate use. But he has no right—I do not mean to use a harsh term—he has no right to steal evidence which he intends to use legitimately. Now, the witness may state what his intent was as to taking them in this manner, this clandestine manner, instead of going to Aspinwall, the owner, and asking his permission. But I submit that there is a wide difference between that and his intention as to the manner, the object, the use to which he proposed to apply them.

Mr. WORTHINGTON: If I understand that argument, it is that if I should go to the Major's house and get his watch, it would not be competent for me, when I was charged with larceny, to prove that he sent me for it, and I went to get it for him.

Mr. CONRAD: Oh, yes, entirely; that is just the thing. That relates to the taking. But if you say you wanted my watch because you were going to travel and needed a time-piece, that would be the use to which you intended to apply it. Now, if you took it with my permission, that relates to the taking; but when you undertake to ask, "Why did you take it? What use did you intend to put it to?" why, that relates to something in the future.

Mr. WORTHINGTON: Very well.

By Mr. WORTHINGTON:

Q. Mr. Crawford, I want you now to first state what took place between you and Mr. Aspinwall in reference to your having access to these letters, and anything that was said about them, without saying anything about what you did or what you intended to do.

A. I went to Newburgh, to the office of the Company, and saw Mr. Aspinwall and told him about this indictment, and
195 told him that I did not know whether I had all the correspondence or not, and I wanted to look over it; I wanted access to it, and I wanted to take what I wanted. Mr. Aspinwall gave me a special room with the files. I was in there by myself, absolutely alone. He put me in a room by myself with all the files, and told me that I might—his words were, as I remember it, "Here are the files, and here is a room for you to go in and work by yourself, and you can have what you want."

Q. Yes, sir. Now, was that all that took place between you before he left in reference to the matter?

A. Before I went into the room.

Q. Yes. Now, did you, then, take the letter of April 18th, and you did take from the letter-book the reply to it?

A. I took the letter of April 18th and took the reply from the letter-book.

Q. Now, do not answer this question: Why did you take them?

Mr. BAKER: We object.

The COURT: The objection is sustained.

Mr. WORTHINGTON: I have already stated what I have offered to prove, your Honor. The record shows that. Very well; I will have my exception, your Honor, to your refusing it.

By Mr. WORTHINGTON:

Q. Now, after you had taken them, what did you do with them?
A. Well, after I took it——

Mr. BAKER: I object.
The COURT: I am intending to exclude by this ruling the purposes for which he may have taken the letter.
Mr. WORTHINGTON: I want to get at his intention, your Honor, of course.
The COURT: Well, that is plain enough; that indicates what I mean. Your question is susceptible of two constructions.
(By direction, the stenographer thereupon read aloud the following question:)
"Q. Why did you take them?
The COURT: That is susceptible of two constructions; and I say that I am only including in my ruling the expression which calls for his motives in taking them for a part of the purpose. That is what is excluded; not the other construction of the question.

By Mr. WORTHINGTON:

Q. Do not answer this question until we see whether an objection is made, and what the ruling is. I ask you, when you took them, whether you had the intention to destroy them?

Mr. BAKER: I object to that question.
The COURT: That is within the ruling. The objection is sustained.
Mr. WORTHINGTON: I would like my exception to that. Very well, then; I will pass that, your Honor.

By Mr. WORTHINGTON:

Q. I will ask you this question now, but do not answer it: What did you do with these letters after you had taken them?

196 Mr. BAKER: I object to that, if your Honor please.
The COURT: The objection is sustained.
Mr. WORTHINGTON: I will state to your Honor what I offer to prove, and I want the record to show what my offer is.
(After stating to the Court out of the hearing of the jury what his offer was, Mr. Worthington then dictated to the stenographer, also out of the hearing of the jury, the following statement:)
Mr. WORTHINGTON: I offer to prove that he brought them to his counsel Mr. Worthington, in Washington.

On recross-examination the witness testified that he was examined at the last trial on the subject of taking the papers and the erasure of the index, and thereupon, he was asked the following question:
Q. Did you not testify at the former trial (page 1291):
"I did not think that Mr. Aspinwall would want me to take a letter, mutilate his files, I did not think he had any objection, except on that ground; but I did not think he would want any one to mutilate his file, and I took the letter out and rubbed that out so that he would not know, and I might have possession of the letter."

A. Yes, sir; I so testified.

Mr. CONRAD: That is all I want to ask him.

The WITNESS: May I add a word to that answer?

Mr. CONRAD: Any explanation, sir, that you wish.

The WITNESS: It was not that I had a doubt in my mind that Mr. Aspinwall would object to my taking the letter, as I testified, and as shown by Mr. Aspinwall's conduct when he put me in a room by myself and told me that I could have everything that I wanated to——

Mr. CONRAD: I object to the witness arguing the case.

The WITNESS: But there was a doubt in my mind——

(The witness thereupon suspended his testimony, in response to the objection, and at the request of Mr. Worthington the remark of the witness was read aloud by the stenographer.)

Mr. WORTHINGTON: Does your Honor object to his saying there was a doubt?

The COURT: I sustain the objection, because it is the province of counsel to argue the case, not that of the witness.

Mr. WORTHINGTON: I agree that the objection is good to what he has just said there; but he was starting to say something about a doubt in his mind.

By Mr. WORTHINGTON:

Q. Do not answer this, Mr. Crawford. I ask you, what was that doubt?

Mr. BAKER: I object to that. It is unintelligible.

Mr. WORTHINGTON: How is it possible to go into as this question now has gone into, what influences were operating on his mind, and not let him state everything that was influencing his mind about it? I undertook to examine him about what was in his mind at the time, and counsel objected to it, and your Honor sustained the objection, and I had nothing more to say. But now counsel come back
197 and read something, and ask him whether he has not testified before as to what was in his mind and what his reasoning was about that.

The COURT: I do not think he asked him about that.

Mr. CONRAD: I simply read to him an answer that he had made at the former trial, and asked him if he answered that. He said he did. Now he wanted to make an explanation.

He said he had a doubt. If you can show where he expressed any doubt at the last trial when he made that answer, why, I admit that you can read that doubt; but he cannot have a doubt now as to what he said then.

Mr. WORTHINGTON (after examining the record): Now, that answer which has been read to him was, "I did not *think* that Mr. Aspinwall"—"I did not *think* he had an objection;" "I did not *think* he would want," and so on. Now, your Honor, since he has been asked to state what he thought I ask him to state all he thought on the subject. Can counsel come back now, after the evidence has been confined to what took place, and it has been held that he cannot

state the operations of his mind, and bring out a part of the operations of his mind on the subject, and I cannot bring out the rest of it?

The COURT: I do not know what he was going to say. If you want to ask him, you can ask him privately and ascertain what he was about to say, and then communicate it to me.

(Counsel upon both sides thereupon conferred privately with the witness, after which the stenographer was summoned, and the witness made to him the following statement, out of the hearing of the jury:)

The WITNESS: In answer to Major Conrad's question, the question being read from the last trial, I wanted to make it clear that I did not think that Mr. Aspinwall would object to my taking any of his files away, but I did think that he would object to my mutilating his files; and I erased the index number so as to keep him from knowing that I had mutilated the files only, and with the idea of putting that back and making his file perfect.

(The stenographer thereupon read to the Court and to counsel for the United States the above statement, also out of the hearing of the jury; whereupon the objection was withdrawn, and the stenographer was directed to read said statement to the jury.)

The COURT: You understand, gentlemen, this is what the witness said privately, which is being read to save a repetition of it.

(Said statement was then read aloud, as above indicated.)

Mr. WORTHINGTON: Now, your Honor, in view of that matter having been gone into on recross-examination, I now again ask the witness this question. Do not answer, Mr. Crawford.

Br. Mr. WORTHINGTON:

Q. What did you do with the letter which you took from the letter-press book of Mr. Aspinwall after you had taken it?

Mr. BAKER: I object.

The COURT: The objection is sustained.

Mr. WORTHINGTON: I would like to have an exception, now.

198 The court and jury were informed by counsel for the respective parties that it was agreed that the Lamb strap was in general use by the letter carriers in 1902, when the matter came up about the new letting.

Thereupon JAMES K. POLK was called as a witness on behalf of the defendant for further direct examination, and testified that he was present in the office of the defendant in the spring of 1903, when Lorenz came into the office and said to the defendant: "I called to see whether or not Mr. Trask would consent to the return and cancellation of the contract;" that Lorenz and the defendant then went into a small room adjoining and talked over the matter there for perhaps thirty minutes; that witness heard part of the conversation; that they were talking about this matter entirely; and that he heard Lorenz say during that conversation that there was nothing wrong in the contract; that when they came out, the defendant had a paper in his hand and said in the presence of Lorenz: "He has relinquished his interest in the contract."

Thereupon WALTER S. MAYER was called on behalf of the defendant, and testified that he was one of the Post Office Inspectors and had something to do with this particular investigation in the spring of 1903; and that at the time the defendant was examined by Mr. Bristow, he, or some of the inspectors had the bearer draft which is in evidence.

Thereupon the government in rebuttal called as a witness JAMES G. STEVENS, who qualified as an expert in the comparison of different typewritten matter, and showed him the letters in evidence dated January 15th, 1903 (exhibit 168 A); letter dated January 17th, 1903 (exhibit 124); and letter dated January 20th, 1903 (exhibit 125), and the slip pinned thereto reading: "Please send New York exchange," and asked him whether he had examined them.

Counsel for the defendant objected to the witness making a comparison of the said papers on the ground that that was not proper evidence in rebuttal, but the court overruled the objection and held that the evidence was proper in rebuttal to contradict the defendant, if the government could; and counsel for the government stated that he offered the testimony on that theory, to which ruling of the court counsel for the defendant duly excepted.

Thereupon the witness testified that he had examined the papers which had been shown to him and had reached the conclusion that the three letters were unquestionably all written by one typewriter, and gave his reason in detail by a comparison of the same letters and figures in the different letters for his conclusion. He also testified that the slip "Please send New York exchange" was written on the same machine as the letter of January 20th, 1903, and gave his reasons in the same way for that conclusion.

199 Thereupon the Government called and examined as a witness in rebuttal WILLIAM F. MILLER, who also duly qualified as an expert in the comparison of typewritten papers, and gave testimony similar to that of the witness Stevens. This was all the evidence in the case necessary to explain the bearing of the rulings of the court at the trial upon the issues or questions involved.

Thereupon counsel for the defendant made the following statement:

Before I go on, your Honor, I want to move to strike out so much of the testimony especially of Mr. Aspinwall as relates to the taking from his office of the letter of April 18th, 1902, and the reply thereto dated April 21st. The ground of the motion is that the defendant's counsel understood it was offered for the purpose of showing an attempt on the part of the defendant to suppress testimony. But since the Court excluded the evidence of the defendant tending to show that he took the letters for the purpose of preserving them as testimony, and that he had no intent to destroy them, I can conceive of no part which that testimony can play in the case. I therefore move to strike it out.

The COURT: The question, as I recall, was not objected to at the time. The witness was under cross examination, and it was admitted for the purpose of testing the credibility of the witness.

Mr. WORTHINGTON: Your Honor is right; it was not objected to, and I did not object to it, because I conceived and conceive now that it was competent; that the purpose of it was to show an attempt on the part of the defendant to suppress evidence. Of course it would be competent then. I offered to show by him that that was not his intent, however, and that he took the letters for the purpose of preserving them, as evidence, and to show in pursuance of that what he did with them, and how they came to be preserved. But your Honor excluded all that.

The COURT: And I was about to say that had the objection been made I would have admitted it, upon the theory I had in mind at the time of making the other rulings which followed later. That was that specific acts of a defendant or anybody else who comes on the stand as a witness, if they are of a nature which in the judgment of the Court tends to throw light in the minds of the jury upon the moral makeup of the individual, and thus enable them to come to a conclusion as to what his sworn word is worth, may always be had, subject only to the discretion of the Court as to the point. That discretion ought to prevent any abuse of any witness, or any holding up of a witness to ridicule or disgrace, or anything of the sort; and I was then and am now of the opinion that the mere fact, if it can be proven by the cross examination of a witness, whether he abstracted a letter from somebody else's files, is a fact that may tend to throw light upon that question in the minds of the jury; and that is why it was admitted. The motion is overruled.

Mr. WORTHINGTON: Very well; I have my exception, your Honor, to the refusal.

Upon motion of the defendant that the government elect on which indictment or which count one of the conspiracy indictments
200 the jury consider, the government elected to proceed on all the counts of indictment No. 23,866, except the first count and on the first count of indictment No. 24,688.

Thereupon the case was argued to the jury.

During the opening argument to the jury, which was made by the District Attorney, the following occurred:

"Now, Crawford either sent that letter (referring to letter dated January 17, 1903, exhibit 124) to Wade Chance and had him sign it, thereby having him put his signature to a lie, or he wrote it himself and forged Wade Chance's name to it; and it makes no difference for this case which he did.

"We have here a genuine signature of Wade Chance; and I will ask you, gentlemen, to take that signature and compared the two for yourselves and decide whether or not this paper is a genuine paper, or whether it is a forged paper.

"Mr. WORTHINGTON: Which do you believe it is, Mr. Baker, for my information?

"Mr. BAKER: I say, for our case, it makes no difference, except this—that if the jury believe that it is a forged paper, it is only

another falsehood among the numerous falsehoods that the defendant has brought into this case.

"Mr. WORTHINGTON: Well, that does not answer my question. I ask you whether you claim it was forged or genuine?

"Mr. BAKER: I do not make any claim about it. The facts I present to the jury. They are the ones that are to decide this case on the facts, and not myself."

In the course of the argument of counsel for the defendant to the jury he said:

Mr. Trask was called upon to testify whether he knew about it, and he said, in the method in which he always spoke about things, "No"—absolutely, "no." Mr. Trask was not asked, gentlemen of the jury—and here is where the Government's case breaks down about these remittances—whether Chance had told him that Crawford had informed him of what was going on about that. You can not infer or suppose anything on behalf of the Government, gentlemen of the jury. Mr. Trask simply stated that Mr. Crawford had not told him about it. Mr. Crawford did not say that he ever did tell Trask about it; but, as was the case with everything else that he did in reference to this business, he communicated with Chance, because Chance was the man with whom he was directed to talk, and Trask had told him to walk with Chance about it; he had said, "You folks attend to it, and let me alone."

Mr. BAKER: I object to that part of Mr. Worthington's speech in regard to what may have occurred between Mr. Trask and Mr. Chance, and I move that that be stricken out; because that testimony would not have been admissible, and if we had asked the question it would have been objected to on the ground that we could not give conversations that took place between Mr. Trask and Mr. Chance in this case.

Mr. WORTHINGTON: It seems to me that this is a remarkable thing, your Honor. The whole question would be whether
201 this man was concealing this from his Company; and he had been directed by Mr. Trask to inform Chance——

The COURT: Well, the objection is well taken. The Government could not have been permitted to have an answer from Trask if they had asked the question of Trask.

Mr. WORTHINGTON: Then the jury are instructed that they are not to pay any attention to what I have said on that subject. I wish either, your Honor, to be able to go on with the argument, or to have my exception to being prevented from remarking on it.

The COURT: I am clear that so far as your remark concerns only the failure of the Government to ask Trask, they would not have had the right to ask him. Your remark is so general as to apply to both yourself and the Government. I am not so clear about your side of it. Now, if you want to comment further or desire to have your comment stand as bearing only upon the failure of the Government to ask Trask, then I will save you the point by instructing the jury that they are not to consider what you have said.

Mr. WORTHINGTON: Very well, your Honor; I will say nothing

further upon that point, and your Honor will allow me an exception to the instruction.

The COURT: Certainly.

Afterwards in the course of his argument to the jury, counsel for the defendant said:

"There is another thing here I want to call your attention to. He (Lorenz) said that he did not know anything about the fact that the straps were to be furnished by the Government; that he did not hear anything about that from Crawford, that he did not hear anything about that from Machen, and did not know anything about it; and the District Attorney said here yesterday and told you that these three men had entered into this conspiracy to defraud the Government about the straps. Well, if the District Attorney does not believe him, how does he expect you to believe him? And then that other yarn that he told you here—"Why, he said "I was making payments to Machen from the Groff payments, but I was doing it on account of a $25,000 note that I owed him." I wonder if Major Conrad will tell you that he believes that?"

Thereupon Mr. Conrad, of counsel for the Government, said: "What is that?" Thereupon counsel for the defendant turning to Mr. Conrad who sat behind him, and directing his remarks to Mr. Conrad, replied: "I wonder, I say, if you will tell the jury that you believe that yarn?"

Thereupon Mr. Conrad, in the hearing of the jury said:

"I do not express my personal opinion to the jury upon any matter. I will tell them that I believe that the Groff case was exactly like this case, and that Lorenz was a distributor to both.

Mr. WORTHINGTON: Now, your Honor, I ask your Honor to instruct the jury to disregard that statement, and tell counsel that he ought not to make such a statement to the jury.

Mr. CONRAD: You turned around and asked if I was going to make a certain statement to the jury, instead of waiting to hear what statement I would make, and I answered your inquiry.

202 The COURT: Mr. Stenographer, let the record — that Mr. Worthington turned and directed his remarks to Major Conrad. The motion is overruled.

Mr. WORTHINGTON: I would like an exception, your Honor.

Mr. CONRAD: Your question required that I should answer your inquiry in the way I did.

Thereupon in the closing argument to the jury by Mr. Conrad of counsel for the Government, the following took place:

Mr. CONRAD: This indictment, or the one we are more concerned with here, charges that Machen and Lorenz and Crawford entered into an unlawful agreement to defraud the United States—a conspiracy they call it. Machen has pleaded guilty, Lorenz has pleaded guilty——

Mr. WORTHINGTON: One moment. Your Honor, I ask that the jury be instructed that they are not to consider that statement (that Machen had pleaded guilty.)

Mr. CONRAD: It has been stated a dozen times here. The gentleman himself has stated it.

The COURT: You had better wait a minute, Major.

Mr. CONRAD: The jury will not consider it as operating on Crawford——

The COURT: I have to instruct the jury that they are not to consider that statement.

Mr. CONRAD: Do not consider it, gentlemen, in any way.

Mr. WORTHINGTON: I have another motion to submit to the Court about that, which I prefer to submit in writing.

Mr. CONRAD: Do you want to interrupt me again?

Mr. WORTHINGTON: If you make any more such remarks as those, I shall most certainly interrupt you. I make that motion your Honor (handing written motion to the Court).

Mr. CONRAD: Shall I suspend, your Honor?

The COURT: Yes, until I consider this, Major.

(After reading written motion.) The motion is overruled.

Mr. WORTHINGTON: I will hand it to the stenographer, that he may insert it in the record, and note my exception to your Honor's ruling.

(The written motion referred to is as follows: "Counsel for the defendant, because of the statement just made by counsel for the Government, moves the Court to discharge the jury from the further consideration of the case.)

The COURT: Before we pass this incident, are my instructions to the jury full enough to cover your point in that particular?

Mr. WORTHINGTON: No, your Honor. I never conceived that such a remark would be made, and there is nothing in my instructions——

The COURT: No; I did not mean with respect to that, but you moved that the Court instruct the jury not to consider the remark. Are my instructions full enough to cover that, here?

Mr. WORTHINGTON: Yes, I am not finding any fault with that. I think your Honor has done all you could do in that regard.

203 The COURT: Proceed Major.

Mr. CONRAD: I hope I shall not transgress when I say to you that Lorenz has appeared before you on the witness stand and confessed this business, and told you how it occurred. The third man, Mr. Crawford, has plead not guilty, and you are trying him. That is the situation. My reference to Machen was not that you might consider it against this man at all. You could not. But it is a fact that you all know and it has been repeated a dozen times in this case.

Mr. WORTHINGTON: I must make the same objection again your Honor, and the same motion. Even now, after your Honor has instructed the jury to disregard that statement, counsel has proceeded to restate it to the jury.

Mr. CONRAD: I have not at all. I have not restated it or anything about it.

Mr. BAKER: I might call attention to the fact that the record itself was offered in evidence here by Mr. Worthington.

Mr. WORTHINGTON: The record in that case was not offered in evidence by me.

Mr. BAKER: I beg pardon. I made the mistake.

Mr. CONRAD: Let us go on——

The COURT: The statement ought not to be made, and it ought not to be persisted in, and it has got to stop. It must not occur again.

Mr. WORTHINGTON: I renew the motion which I made in writing a few moments ago, and which was handed to the stenographer.

The COURT: I repeat the instruction to the jury then, that they are not to consider that statement.

Mr. WORTHINGTON: I accept that as all your Honor can do if your Honor does not grant the motion I have made; but I would like to reserve my exception again.

The COURT: Yes.

Thereupon counsel for the defendant requested the court to instruct the jury as to the first count of indictment No. 24,688 to render a verdict in favor of the defendant. Which said motion was based upon the same propositions of law that are raised as to this count by the demurrer heretofore filed to that count. — the granting of this motion counsel for the United States objected, and the court sustained the objection, and refused to so instruct the jury, to which ruling of the court counsel for the defendant duly excepted.

Thereupon counsel for the United States requested the court to give to the jury the following instruction:

1. "The jury are instructed that if they find from the evidence, beyond a reasonable doubt, that the defendant Crawford, agreed, directly or indirectly, with Machen and Lorenz, or either of them, that he, said Crawford, should procure the Postal Device and Lock Company to bid for the contract to furnish satchels to the Post Office Department of the United States, and should cause the said Postal Device and Lock Company to make a contract with Lorenz to pay to Lorenz a share of the money received by said Postal Device
204 and Lock Company, out of the payments made by the Post Office Department on account of the said satchel contract, and should further find that the defendant Crawford agreed with Machen and Lorenz, or either of them, directly or indirectly, that this money so paid to Lorenz by said Postal Device and Lock Company, or any part thereof, should be divided in any way between the said Crawford, Machen and Lorenz, and should find beyond a reasonable doubt that the defendant presented a claim or bill for $15,800, as described in the indictment 24,688 to the Post Office Department, their verdict should be guilty on said first count."

To the granting of this instruction counsel for the defendant objected, but the court overruled the objection and gave the instruction to the jury, to which ruling of the court counsel for the defendant duly excepted.

Thereupon counsel for the United States asked the court to give to the jury the following instruction:

2. "The jury are instructed that to constitute a conspiracy it is not necessary that two or more persons should meet together and enter into an explicit or formal agreement for the unlawful scheme, or that they should directly in word or in writing state what the un-

lawful scheme is to be, and the details of the plan or means by which the unlawful combination is to be made effective. It is sufficient if two or more persons, in any manner or through any contrivance, openly or tacitly come to a mutual understanding to accomplish the unlawful design. In other words, where an unlawful end is sought to be effected, and two or more persons actuated by a common purpose of accomplishing that end work together in any way in furtherance of the unlawful scheme, such persons become conspirators, although the part which any one of them is to take in the conspiracy is a small or subordinate one, or is to be executed at remote distance from the other conspirators."

To the granting of this instruction counsel for the defendant objected on the ground only that it was an abstract proposition of law, and that in that form it should not be given to the jury. But the court overruled the objection and gave the instruction to the jury, to which ruling of the court counsel for the defendant duly excepted.

Thereupon counsel for the United States asked the court to give the following instruction:

3. "The jury are instructed that a particular conspiracy may not be susceptible of proof by direct testimony. The fact of the combination may therefore be established by proof of the acts of the several parties in such combination, and the relation of these acts to each other, and their tendency by their united effect to produce a common result, if such proof is sufficient to the minds of the jury. In other words, if you find that the acts of the parties charged here with conspiracy are the co-ordinates of each other and needed for the consummation of the criminal purpose charged in the indictment as the object of the conspiracy, you are justified in finding that the various parties performing these several and respective acts were engaged in a conspiracy to produce the unlawful result, al-
205 though there may be no direct evidence before them to show that such parties ever entered into any agreement to accomplish such unlawful purpose, provided that the acts which you find have been performed, satisfy your minds beyond a reasonable doubt, of such conspiracy."

To the granting of this instruction counsel for the defendant objected on the ground that the instruction mingled abstract and concrete propositions, and was liable to confuse the jury, but the court overruled the objection, and gave the instruction to the jury, to which ruling of the court counsel for the defendant duly excepted.

Thereupon at the request of counsel for the defendant the court gave to the jury the following instructions:

1. "The jury are instructed that under the contract of June 25th, 1902, between the United States and the Postal Device and Lock Company, in evidence, the Postal Device and Lock Company were not required to furnish shoulder straps with satchels of Class B."

2. "The jury are instructed that the law presumes the defendant to be innocent, and that this presumption remains with him through all stages of the case, and entitles him to a verdict of not guilty unless the jury shall be satisfied beyond a reasonable doubt by all

the evidence in the case that he is guilty as charged. And in this connection the jury are instructed that none of the indictments on trial, is to be considered by the jury as evidence in any degree of his guilt. They are simply accusations, and nothing else."

3. "The jury are instructed that if they find from the evidence that the defendant's reputation for honesty and integrity prior to the spring of 1903 was good in the different communities in which he lived, then the jury are instructed that such reputation is to be considered by them as one of the facts in the case in weighing the evidence against him."

4. "The jury are instructed that it is not charged in the indictment 24688 that there was any conspiracy to defraud the Government by having the Government furnish shoulder straps for satchels of Class A and Class C and having the bills paid as though such shoulder straps had been furnished by the Postal Device and Lock Company. The evidence which has been allowed to go to the jury tending to show that as to satchels of Class A and Class C, the shoulder straps were furnished by the Government and bills rendered and paid for the satchels in full, is to be considered by the jury, as to that indictment only in so far as in the opinion of the jury it may tend to throw light upon the question whether the defendant, William G. Crawford, is guilty as charged in that indictment, as such charge is defined in the other instructions of the Court."

5. "The jury are instructed that they are not to consider the letter of December 7th, 1903, from Mr. Aspinwall to the defendant in evidence as tending to prove the truth of any statement therein contained."

Thereupon counsel for the defendant requested the court to give to the jury the following instruction:

206 6. "If the jury find from the evidence that on or about the 3rd day of June, 1902, the Postal Device and Lock Company in contemplation of a contract which it expected to obtain from the Government for supplying the Post Office Department with carriers' satchels, entered into a contract wi-h George E. Lorenz, dated June 3rd, 1902, in evidence, then the jury is instructed to render a verdict of not guilty as to the first count of indictment No. 24,688, unless the jury is satisfied by the evidence beyond a reasonable doubt that in so far as said contract provided for the payment by said Company to said Lorenz of all the profits that might be made out of said contract over and above twenty-five cents per satchel, was not in good faith superseded by the contract between said Company and said Lorenz, dated — 1902, being exhibit No. 86 in this case."

To the granting of said instruction counsel for the United States objected, and the court sustained the objection and refused to give the instruction to the jury, to which ruling of the court counsel for the defendant excepted.

Thereupon counsel for the defendant requested the court to give to the jury the following instruction:

7. "The jury are instructed that even if they should be satisfied from the evidence beyond a reasonable doubt that the defendant Crawford conspired with the defendants, August W. Machen and

George E. Lorenz, as charged in the first count of indictment No. 24,688, they will render a verdict of not guilty if they find from the evidence that the grand jury that returned that indictment knew, or by the exercise of reasonable diligence might have known, that said Lorenz from the sums received by him from the Postal Device and Lock Company under the contracts between said Company and said Lorenz, in evidence, had paid to the defendant Crawford one-fourth of each payment, and had paid to August W. Machen one-half of the remaining three-fourths of such payments."

To the granting of said instruction counsel for the United States objected, and the court sustained the objection and refused to give the instruction to the jury, to which ruling of the court counsel for the defendant excepted.

Thereupon counsel for the defendant requested the court to give to the jury the following instructions:

8. "The jury are instructed that if they find from the evidence that when the contract of June 25th, 1902, between the United States and the Postal Device and Lock Company, in evidence was entered into, the defendant, Crawford, in good faith, expected and intended that the Postal Device and Lock Company should furnish shoulder straps with the satchels of class "A" and class "C," referred to in said contract; that afterwards August W. Machen, Superintendent of General Delivery in the Post Office Department, in his official capacity, and of his own motion, directed that the shoulder strap known as the "Lamb Strap" should be used with satchels delivered under said contract; that it was impossible for the Postal Device and Lock Company, or said Crawford, as its general manager to obtain said straps; that the Lamb strap was accordingly
207 furnished by the Government with the understanding on the part of said Crawford as the representative of said Company that at the end of each fiscal year a reasonable and proper deduction should be made from the amounts payable to said Company under said contract on account of its not furnishing shoulder straps for satchels of Class A and Class C, as required by the terms of said contract; and that in this regard said Crawford acted in good faith, and without any intent to inflict any pecuniary loss upon the Government, or to defraud it in any way, then the jury is instructed that as to indictment No. 24,688 they are not to consider the fact the shoulder straps were not furnished with the satchels as evidence of the guilt of the defendant, Crawford."

To the granting of said instruction counsel for the United States objected, and the court sustained the objection and refused to give the instruction to the jury, to which ruling of the court counsel for the defendant duly excepted.

Counsel for the defendant thereupon requested the court to give to the jury the following instruction:

9. "The jury are instructed that the testimony of the witness, Lorenz, tends to show that he is a confessed member of the alleged conspiracy, sought to be proved by the Government, and that he is under indictment therefor.. Such a connection with the offense charged would make him an accomplice. As an accomplice he is

a competent witness, that is, the Government had a right to have him sworn, and the jury should consider his testimony. But the jury are further instructed that the testimony of an accomplice is always to be received by them with extreme caution and weighed and scrutinized with great care, and that the jury should not convict upon it unsupported, unless it produces in their minds the fullest and most positive conviction of its truth."

Counsel for the United States objected to this instruction, and the court refused to grant it in the form in which it was presented, to which ruling of the court counsel of the defendant duly excepted.

Thereupon the Court modified the instruction and granted it in the following form:

"The jury are instructed that the testimony of the witness, Lorenz, tends to show that he is a confessed member of the alleged conspiracy, sought to be proved by the Government, and that he is under indictment therefor. Such a connection with the offense charged would make him an accomplice. As an accomplice he is a competent witness, that is, the Government had a right to have him sworn, and the jury should consider his testimony. But the jury are further instructed that the testimony of an accomplice is always to be received by them with caution and weighed and scrutinized with care."

Thereupon counsel for the defendant requested the court to give to the jury the following instruction:

—. "The jury are instructed that under the evidence in this case said contract of June 25th, 1902, was a valid contract, and that there is no evidence in the case tending to show that the defendant, William G. Crawford, was connected in any way with any com-
208 bination or agreement having for its object the obtaining of said contract by any illegal or improper means."

To the granting of said instruction, counsel for the United States objected, and the court sustained the objection and refused to give the instruction to the jury, to which ruling of the court counsel for the defendant duly excepted:

Thereupon counsel for the defendant requested the court to give to the jury the following instruction:

11. "The jury are instructed that unless they are satisfied by the evidence in the case beyond a reasonable doubt that the defendant, William G. Crawford, agreed with the defendants Machen and Lorenz, or one of them, that a part of the money payable to the Postal Device and Lock Company under the contract between that Company and the Government, in evidence, dated June 25th, 1902, should be paid to said Machen through said Lorenz for the purpose of influencing the official conduct of said Machen, in reference either to letter carriers' satchels under said contract or to payments therefor, their verdict as to indictment No. 24,688 should be not guilty."

But the court refused to grant the instruction in the form in which it was presented, to which ruling of the court counsel for the defendant duly excepted.

Thereupon the court modified the instruction and gave it to the jury in the following form:

"The jury are instructed that unless they are satisfied by the evi-

dence in the case beyond a reasonable doubt that the defendant, William G. Crawford, agreed with the defendants, Machen and Lorenz, or one of them, that a part of the money payable to the Postal Device and Lock Company under the contract between that Company and the Government in evidence, dated June 25th, 1902, should be paid to said Machen through said Lorenz, their verdict as to indictment No. 24,688 should be not guilty."

Thereupon counsel for the defendant requested the court to give to the jury the following instruction:

12. "The jury are instructed that there is no evidence in this case tending to show that the defendant at any time prior to early in August, 1902, was a party to any agreement or understanding that shoulder straps called for by said contract of June 25th, 1902, were not to be furnished in accordance with the terms of said contract."

To the granting of said instruction counsel for the United States objected, and the court sustained the objection, and refused to give the instruction to the jury, to which ruling of the court counsel for the defendant duly excepted.

Thereupon counsel for the defendant requested the court to give to the jury the following instruction:

13. "The jury are instructed that the evidence in the case tending to show the payments of money by said Lorenz to said Machen on account of payments received by said Lorenz from the Postal Device and Lock Company is not to be considered by the jury for any purpose whatever, unless the jury are satisfied by the evidence
209 beyond a reasonable doubt that before said payments were made the defendant Crawford had agreed with said Machen and said Lorenz or with one of them that said payments should be made by said Lorenz out of the moneys so to be received by him."

To the granting of said instruction counsel for the United States objected, and the court sustained the objection, and refused to give the instruction to the jury, to which ruling of the court counsel for the defendant duly excepted.

Thereupon counsel for the defendant requested the court to give to the jury the follow-ng instruction:

14. "The jury is instructed that the note for $500.00 which is exhibit "Machen Note" in this case, and the letters from the defendant Crawford to said Machen which are exhibits 69, 70 and 127 in this case, should be considered by the jury only in so far as in the opinion of the jury they tend to show what were the relations between said Crawford and said Machen prior to the transactions which are directly involved in the case now on trial, or tend to contradict the defendant Crawford."

To the granting of this instruction counsel for the United States objected, and the court sustained the objection and refused to give the instruction to the jury, to which ruling of the court counsel for the defendant duly excepted.

Thereupon counsel for the defendant requested the court to give to the jury the following instruction:

15. "The jury are instructed that the evidence which has been admitted in this case tending to show that the defendant, George E.

Lorenz, paid to the defendant, William G. Crawford, in the manner shown by the evidence, twenty-five per cent. of the amounts received by him on three different occasions from the Postal Device and Lock Company, is to be considered by the jury only in so far as in the opinion of the jury in reference to indictment 24,688, it may tend to throw light upon the question of whether the defendant William G. Crawford, was a party to the alleged agreement or understanding with said Lorenz and said Machen, or either of them, that a part of the money so received by said Lorenz should be paid to said Machen. If in the opinion of the jury such evidence does not throw any light upon that question, then it should be disregarded by the jury."

To the granting of this instruction counsel for the United States objected, and the court sustained the objection and refused to give the instruction to the jury, to which ruling of the court counsel for the defendant duly excepted.

Thereupon the Court orally charged the jury as follows:

Charge to the Jury.

The COURT: Gentlemen of the jury, in order to simplify your deliberations, and to make certain that you might not be confused by the necessity of determining a multitude of questions, the Court required the Government to make choice between certain of the charges which were submitted to you when you were sworn. The result of that choice is that now there are before you for
210 determination by you only certain parts of two indictments. There are before you respecting the offense of conspiracy only a single count of one indictment. The other indictment for conspiracy is done away with, for the time being.

In addition to that one charge of conspiracy, which is contained in the first count of the conspiracy indictment, there are three other charges, each in a different count, of what has been identified by counsel as the false claim indictment. So that with respect to that indictment, the second, third and fourth counts are to be decided by you, and the question of the defendant's guilt or innocence thereupon. And with respect to the first count of the single conspiracy indictment, that, and the question of the defendant's guilt or innocence thereunder is for determination by you. The balance of the counts are out of the way, in so far as you need concern yourselves with them in your deliberations.

Therefore I shall point out the rules which first shall enable you to understand the offense of conspiracy and, secondly, to apply this evidence which you have heard to determine the question whether the defendant is guilty under the conspiracy indictment. After that I will point out to you the essentials, both in the way of characterizing the elements of the other indictments, and of the proof which is essential in order to a conviction thereunder.

The conspiracy count is formulated under a section of the Act of Congress which provides that if two or more persons conspire to defraud the United States, and either of them does an act to effect the object of the conspiracy, then all of them shall be guilty of an offense and punished.

There are three elements to that statute which you must understand: First, you must understand what the law means by a conspiracy. Second, you must understand what the law means by the phrase "to defraud the United States;" and, third, you must understand what the law means by that expression "if either of them does an act to effect the object of the conspiracy."

Let us take these elements in detail: When men get together and agree to do that which is lawful, we call it a contract. When they get together and agree to do that which is unlawful, we call it a conspiracy. That is the only difference. So that you need not have any fear of a failure upon your part to understand the significance of the word "conspiracy," if you bear in mind that it is a term which is used to denote an agreement to accomplish an unlawful purpose, as distinguished from an agreement to accomplish a lawful purpose.

With respect to the second element, what the law means by the expression "conspiracy to defraud the United States;"—you cannot determine whether two people or three do agree to defraud the United States, unless you know how the United States can be defrauded. And inasmuch as there are many ways in which the United States can be defrauded, and only one way charged in this indictment, if you understand how the United States can be defrauded in the manner charged in this indictment, then that is all you are con-
211 cerned with for the purposes of the decision of this case; because it would not help you any to draw your minds to propositions that are not concerned in the determination of this case.

The United States is entitled, as any other employer is entitled, that its employees shall be qualified to perform the service upon which they are engaged; and if anything transpires which renders an officer or an employé of the United States disqualified to perform the duties that the Government requires of him, and he continues in that employment while he is disqualified, then the United States is defrauded; just as if you had in your business an employé to whom you committed the duty of making the decision of certain questions that arose in your daily business, and you left that to him; if somebody paid that employé of yours, and that payment related to a matter concerning which your employé's duty made it necessary for him to decide questions in your business, then you would be defrauded, for the reason that when your employé has a personal interest of his own which conflicts with your interest upon a matter that he has to decide for you, then, as a matter of law, he is disqualified from deciding that honestly and fairly on your behalf. Just so it is with the Government of the United States, and so it was respecting Machen's relationship with the Government of the United States at the time in controversy. You may take it for granted that during the time of Machen's incumbency as General Superintendent of the Free Delivery Service, it was then his duty to pass upon and determine on behalf of the Government certain questions respecting both the formation of this contract for the purchase of carriers' satchels and the carrying out of the contract after it was entered into.

I shall only concern you with one of those duties, because the illustration will thus be sufficiently made: In other words, there is evi-

dence tending to show that after the contract had been entered into with the Government, Machen was the official who, on behalf of the Government, determined when satchels were needed, and ordered satchels.

If Machen was under the duty of exercising that discretion, that judgment, and of deciding when it was time to order new satchels and how many satchels the Government needed, if he was under the duty of making that decision, and if at the same time he had an interest in the contract under which the satchels were to be furnished and was to receive a portion of the proceeds of the payment for those very satchels which he was under the duty of ordering, there the fact was that his personal interest was in direct collision with the interest of the Government, and that, as a matter of law, disqualified him to pass upon the question on behalf of the Government; and in that regard the United States was defrauded by having its official thus disqualified by a personal interest in the contract. That is the kind of defrauding of the United States that this first count of the conspiracy indictment deals with.

In other words, in that regard the charge here against Crawford is that he, Machen and Lorenz agreed to give Machen a part of the proceeds of this satchel contract. That is to say, that they agreed to give Machen such an interest in the satchel contract as that
212 he would get a part of the money by way of a division of the proceeds of the satchel contract. If they did have that kind of an agreement, that was an agreement to defraud the United States, and inasmuch as that was unlawful, then the crime was a conspiracy; because, as I have already said, the only difference between a conspiracy and a contract is that the conspiracy is an agreement to do an unlawful thing.

You observe the phraseology of this statute: "If two or more persons conspire to defraud the United States, and either of them performs an act to effect the object of the conspiracy." That is all of the statute, in so far as this case goes; so that it is not at all necessary to guilt under that statute that the United States should have been defrauded. It is not necessary at all to prove that the United States lost a penny by this contract. It is not necessary at all for the Government to establish that the contract was an unfair contract. In so far as that proposition is concerned, you can take it for granted that the contract is a perfectly valid, lawful, just contract, and still the defendant would be guilty if, in addition to having this valid and just contract, if you assume it to be such, he and Lorenz and Machen, or he and either of them, made an agreement to vest Machen with such an interest in the proceeds of that contract as that Machen was to get part of the proceeds, because in this particular indictment the Government does not claim that the United States was to have been defrauded by taking money out of the Treasury under a vicious contract; but it claims that if the United States was to be defrauded at all in this regard, it was to be defrauded by Machen's action in ordering more satchels than were necessary, or at times when they were not necessary; and in that regard so exercising his official judgment as to turn the situation to the advantage of himself rather than to the advantage of the Government.

I am only speaking upon this particular point, so that when you go to the jury-room you will understand how the United States might have been defrauded, although, as I have said, it is not necessary for the Government to prove that the United States actually was defrauded.

Taking, now, the next proposition which is essential to guilt under the conspiracy charge—and you can see the reason for the necessity for the presence of this third requirement in the statute if you will reflect for a moment; because it is never the policy of the criminal law to punish individuals who merely agree to violate the law, and never go forward into the performance of any act which can accomplish or move forward a violation of the law. So that men can get together all they please and agree to violate the law. The law in no wise yet lays hold of them, but it leaves them the opportunity for repentance. It is charitable enough to take no notice of the mere agreement, so long as they proceed no further than the agreement. But if after having made the agreement, they do go from their agreement and one or the other performs some affirmative act which is susceptible of moving that agreement nearer to consummation than it was before, then you see that the time for action, or the time of action is past, and then it is that the law, and only then, that the law takes hold of the situation.

213 That is why it is that Congress has enacted in this section that if two or more persons conspire to defraud the United States, and one or the other does any act to effect the object of the conspiracy, then they shall all be guilty.

So that before the defendant can be convicted under the conspiracy indictment at bar, it is necessary not only that the proof should satisfy you to the requisite degree of certainty—and I will point that out later—that Crawford agreed with Lorenz and Machen, or with either of them, that Machen should be vested with such an interest in this contract as that he should have part of the proceeds of it; if you have that much, you have the conspiracy proven, the unlawful agreement proven, but you have not yet enough proven to make out guilt under this section, because the section requires in addition to the unlawful agreement that an act in furtherance of the object of the conspiracy must have transpired and been committed by one or the other of them. That is what counsel refer to when they use the expression "overt act."

In that regard, it must be brought out by the evidence that one or the other of the parties to the unlawful agreement took some affirmative action which moved the consummation of the unlawful agreement somewhat nearer to completion. In this case at bar the Government claims that the acts in furtherance of the object of the conspiracy were the making out and presentation of bills by Crawford, the collection of the money upon the bills for satchels that had been supplied, and the transmission of that money to Lorenz. If there was un unlawful agreement between Lorenz, Crawford and Machen, or between Crawford or either of them, to vest Machen with a part of the proceeds of the contract, through Lorenz, why then the sending of the money by Crawford to Lorenz would bring it just that

much nearer to Machen's hand; and in that regard would have moved forward, somewhat, the object of the conspiracy. Therefore, upon that single point of overt act, upon the point of whether or not there was an act performed to effect the object of the conspiracy which this indictment charges I have to say to you as a matter of law that the transmission by Crawford to Lorenz of a part of the money was an act in furtherance of the object of the conspiracy which is charged in this indictment. So that you see with respect to the conspiracy charge, the question will turn before you on the proposition whether or not the evidence here proves beyond a reasonable doubt that Crawford knew that Machen was to receive some of this money that he sent to Lorenz. In other words, that Machen and Lorenz and Crawford agreed that Machen should have a part of the proceeds of the contract; because, if that is made out by the evidence, why then it follows, from what I have already said, that the necessary act is sufficiently proven, because the act of sending the money or part of it, to Lorenz by Crawford would be a suffici-nt act to move forward that kind of a conspiracy.

I trust that that sufficiently points out to your understanding the nature of the offense of conspiracy, and also what has to be proven before guilt can be established.

Before passing from that to the other indictment, let us
214 take into consideration for a moment the means whereby the Government undertakes to prove what is necessary to be proven. They bring both direct evidence and circumstantial evidence which tends to prove that Crawford agreed with Lorenz that Machen should have part of the proceeds of the contract. I can then convey to you the significance of the expression "direct evidence" and that of the expression of "circumstantial evidence" by an illustration: If you are concerned in finding whether a human being passed a certain point at a certain time, whether a human being went by there, you can find it out in two ways, perhaps. You can go and inquire and ask people, and some one may be found to say: "Yes; I saw a person pass there." It might happen that snow was on the ground and you would go yourself to that locality and see the human footprints in the snow. You would know from that that somebody had passed. Direct evidence is where the jury takes the word of the witness for the ultimate fact; and circumstantial evidence is where the jury is asked to arrive at a belief of the existence of the ultimate fact by the indicia of other facts that are submitted to them.

The chief concern that any tribunal, either court or jury, has in dealing with purely circumstantial evidence is to be sure that the facts upon which they rely for their conclusion are sufficiently proven before them; because, inasmuch as the great bulk of all testimony which goes to a jury comes from the lips of the witnesses, it generally develops that witnesses must be heard to testify to the fact from which the jury is to make the inference; so that you recur back to the illustration that I gave you a moment ago. It would work out thus, when you came into court: If you go yourself and see the proof of the human footprints in the snow, that would settle the matter

beyond a peradventure in your mind; but if the matter were being elucidated in court, individuals would have to be brought to testify that they saw the footprints in the snow. That brings in at once the question of the veracity of witnesses, which is just as present in cases of circumstantial evidence as it is in any other kind of cases. You would have to determine whether you believed the source from which the information concerning the fact is brought to you.

The Government has introduced direct testimony through the medium of Lorenz, because he testified directly to the point of the agreement. In addition to that, it has introduced the circumstantial evidence, that is to say, the facts which the Government claims prove the existence of the agreement, independently of Lorenz's testimony, and in corroboration of it; for the Government makes both claims.

In dealing with the question of what effect you will find to have been produced upon your minds by the testimony of Lorenz, you are confronted in the outset by the proposition that he himself is guilty of an offense of conspiracy and that he comes before you in the role of an accomplice, because that is what he says he was. And you are concerned with knowing what to do when you have such a witness to deal with. You must remember, in scrutinizing the testimony of Lorenz or of any other witness, that you are not here taking sides, in any controversy, or interested in any controversy between
215 Lorenz and Crawford, or between Crawford and any other particular witness, except so far as you can elicit from the testimony of all and any of the witnesses some fact which can enable you to decide the truth of the questions before you in the case of the United States *vs.* William G. Crawford. This is no contest between Lorenz and Crawford in the sense that they are arrayed against one another as parties to the controversy that you are determining. The importance of that suggestion is this: It may turn out that an accomplice is telling part of the truth, and that he is undertaking to deceive both sides in the case in part, but with respect to a part of it he is telling the truth of the matter. Your concern is, when you deal with Lorenz's testimony, to ascertain how much or how little of the truth he is telling, and to allow your deliberations to be influenced by Lorenz's testimony only to the extent that you believe he is telling the truth, and to the fullest extent that you believe he is telling the truth, the same as you would with respect to any other witness.

When you come to consider either the testimony of Lorenz or that of any other person who has been produced as a witness, when it is controverted, you must consider and determine with respect to those influences which are susceptible of swaying the individual from the truth. In other words, determine as far as you can from the evidence in the case whether there is anything in Lorenz's present situation compared with what he expects the developments of the future to be which is influencing him to color the case against Crawford on account of desiring some favoritism from the Government or expecting the like.

On the other hand, you are entitled to view Lorenz's testimony in the light of other conceded circumstances in the case which may tend

to corroborate him. In other words, you are entitled to put what he says against what you believe to be facts that come either from his lips or from the lips of other people; after all, making up your minds how much, or, as I have said, how little of the truth he is telling, and give it weight accordingly.

His testimony is not to be thrust aside merely because he is an alleged accomplice, or a self-confessed accomplice. The right to call such persons as witnesses is one that is expressly recognized throughout the law, and, indeed, by the acts of Congress on the subject. You are not to throw it out from that mere consideration alone, and you are not to give it credit out of the mere fact that it appears that his case or one of his cases is settled. But, taking everything into consideration which can help you on that subject, make up your honest minds about how much or how little of the truth he is telling you, and give it that weight in reaching your conclusions. Even if you decide that he is not telling you any truth, even if you decide that you cannot rely on what he says on any proposition, that does not settle the case in Crawford's favor, because then you have to proceed to determine whether the case is made out by the other evidence in the case, aside from Lorenz.

I cannot undertake to go in detail through all the circumstances which the Government claims tend to show Crawford's guilt,
216 and which Crawford claims tend to show his innocence. I can only take up enough of it to serve to illustrate to you the manner that you shall adopt in solving the question. For example, when you deal with the Government's claim, they claim amongst other things that the amount that was distributed out of the proceeds of the contract was disproportionate, was large. They claim that the share that Crawford transmitted to Lorenz was so disproportionate as to be a suspicious thing. They claim, again, that Crawford not only received back a share of what he transmitted to Lorenz, but that what he did receive back was utterly disproportionate to the reason he claims for receiving it, he in that regard, claiming that he had an agreement with Lorenz to look after Lorenz's interest in the distribution.

You must take both the fact that the Government urges—and this applies to all the facts that tend against the defendant—you must take both the fact that the Government urges and the defendant's explanation of the fact, and determine whether he does explain away the significance of that which without his explanation would tend to incriminate him.

In other words; for illustration: Take the single incident of the receipt by him back from Lorenz of a proportion of the proceeds. He claims in that regard that he had a contract with Lorenz, and that he was receiving that in payment for services that he was rendering Lorenz, in seeing that he promptly got his remittances. You are entitled to take into consideration the probability of that. That is one of the tests of truth, the probability of that explanation of his, whether it is likely, in the first place, that Lorenz or anybody else would agree to pay him that much for what he says he was to do. But if you find that it is a satisfactory explanation, if you believe it,

and are ready to feel confidence in the defendant's explanation of it, why then that particular fact concerning which his explanation satisfies you ought not to have any weight in your minds against him. But if a fact tends to incriminate him, and you find that his explanation is not satisfactory and not true, but false, then you have not only the incriminating fact with its natural significance of incrimination, but you have the falsehood with respect to it; and in that regard you are entitled to consider a falsification, if you find the defendant makes one with respect to a relevant fact, you are entitled to take that into consideration, in itself alone, as indicative of guilt.

The Government claims in addition that the conduct of the defendant was such as to show that he was fabricating a false situation while these payments were passing back and forth, claiming that he, with respect of the first remittance from Lorenz to himself, made use of a bearer draft, an unusual thing, which he did not put through his bank; and second that, with respect to another remittance, he made use of a check or draft, whichever it was, made payable to his own order, but did not put it through his own bank, but went to another bank and endorsed the name of the Burnham Manufacturing Company on it; the Government claiming in that regard that his so dealing with respect to these two remittances
217 was for the purpose of shielding himself against the possibility of connection with this matter in a criminal way. And the Government claims in addition to that that the letter of January 17th, concerning which the two witnesses testified, was a fabrication of Crawford's. You have to determine that question. It is one of the questions in the case submitted to you by the Government for determination—that is, this letter No. 124, purporting to be dated New York. The Government claims that if that letter be compared with certain conceded letters of Crawford's notably one dated January 15th, directed to "My dear Chance," that it will appear from a comparison that the letter, Exhibit 124, and the other two, were written on the same typewriter, from which the Government claims to draw the inference that Crawford prepared all of them. Suppose you find he did. Then, the importance of it is here: That letter says: "The last strap sent to our works at Hartford, while accepted by the Government and shipped, seemed to be lighter in color and weight than previous lots. Will you please have this matter brought to the attention of the manufacturers, and notify our Washington office when you forward the receipts enclosed herewith for your signature. Yours very truly, Postal Device & Lock Company, Wade Chance, President."

If Crawford wrote that, it was assuming a false situation by him; and that is the theory that the Government puts it to you upon, that it, taken in connection with his dealings with the bearer and other drafts, shows that he was creating a false situation, their claim being that he was desiring to have a false situation in existence so that he could shield himself behind it if he was ever called upon to answer in a court of justice. But if you find that this letter was not prepared by Crawford, then I do not see any other significance that it has in

the case. If it has any other significance, counsel can correct my remembrance of the evidence.

I think of nothing that can aid you in addition to what has been said respecting the conspiracy indictment, except some general instructions which will follow after I have suggested what is to be said concerning the other indictment.

That other indictment is before you with respect to the second, third and fourth counts of it. Each of those counts charges the defendant with presenting to McGregor a false claim, and in each of the three counts the false claim that is charged is one of the claims that was made for the payment of satchels which were supplied under the contract, the Government claiming that the falsity lay in the fact that the claims calls for the payment by the Government to the Postal Device & Lock Company for straps which had never been furnished to the Government. The law on that subject is this:

"Every person who presents for payment to any person or officer in the civil service of the United States any claim against the Government of the United States or any department thereof, knowing such claim to be false, is guilty," &c.

There are numerous safeguards created by the law of the land respecting the withdrawal of public moneys, and one of the
218 safeguards which the law throws about public moneys is that, with respect to the money of the United States, if anybody makes a false claim, presents for payment a false claim for these moneys to one of the persons named in this section, he is guilty of an offense, if he knew that the claim was false at the time he presented it. So that there is involved in each one of the three counts of the false claim indictment, so-called, the proposition whether Crawford "presented for payment to a person or officer in the civil service of the United States a false claim against the Government of the United States, knowing it to be false." The Government claims that the person or officer of the United States was McGregor. Therefore, in that regard, if you find that McGregor was a person in the service of the United States charged with the approval in any respect of bills against the United States concerning payments for satchels and shoulder-straps under this contract that the Postal Device & Lock Company had, and that Crawford presented to McGregor for approval and payment a claim against the Government for shoulder-straps that had not been furnished to the Government, and at the time of so presenting such claim Crawford knew that those straps had not been furnished, then he is guilty with respect to that particular claim.

You have to know what the law means by "presenting." It does not necessarily mean that he shall walk up and manually hand the paper to McGregor. If he did that, that is a presentation; but he may have presented it to McGregor without having manually handed him the paper? If McGregor was in the Department as a clerk or person charged by the routine or custom of the Department with any duty of scrutiny or approval concerning these bills, and if Crawford knew that, and either handed in to the Department or himself sent by mail to the Department a claim which he knew in the routine of things would go through McGregor's hands, then he

presented the claim to McGregor, although he did not hand it to him manually.

With respect to what duty it is essential McGregor should have had in this regard: It is not necessary that McGregor shall have had the duty of approval of the bill; it is only necessary that McGregor should have been somewhat concerned with a checking up of the items furnished by the bill, or some other method of testing the authenticity of the bill, in order to constitute McGregor such a person as is contemplated by this section. These three bills here, each one of them, appear to bear the endorsement of McGregor's initials. One bears the endorsement "Correct;" the other, "Correct;" and the third "Correct," T. M. G."

I call that to your attention so that you can determine from the evidence whether it shows that it was McGregor's duty to take up these items and whether this indorsement of his meant to his superior: "These items have been furnished." If he had that duty to perform, he is such a person as is contemplated by this section.

The only difference between the three counts in the false claim indictment is that one count charges this bill (indicating),
219 another count charges that bill (indicating), and the third count charges the other bill, the third bill. The counts, therefore, only differ as the various bills differ in amounts and dates and the like. And you will have, in determining upon that indictment, to pass upon each of the counts, and determine whether he is guilty with reference to one, two, three or none of them.

Mr. BAKER: Your Honor there means the second, third or fourth counts.

The COURT: The second, third or fourth counts, yes.

Now, with respect to some general instructions that are of importance. First, though, I desire to point out to you the theory upon which the Court ruled in admitting certain testimony from Crawford about having taken a letter from Aspinwall's files. To the extent that there was any ruling by the Court in that regard, it was admitted so that it might help you in knowing what kind of a man was here as a witness; on the theory that if this had been a breach of faith with Aspinwall, a violation of confidence that amounted to the purloining of letters from his files, and a breach of confidence, that you might take that into consideration in determining how much and what was the degree of moral sense that the witness Crawford had. It does not tend to indicate that he is guilty. It was not admitted on that theory, but to help you in determining his credibility as a witness.

If you find that his explanation of that is true, because he says that he thought Aspinwall had given him permission to take the letter, if you believe that he thought that, why that exonerates him from any criticism in that regard; but in determining whether you believe that he thought that, you are entitled to take into consideration the fact that he erased the index.

The defendant has offered evidence as to his reputation for honesty and integrity at the time this offense is charged against him, and prior thereto. It is the right of any man charged with crime to

identify himself before the jury that tries him, if he can, so that they know what manner of man he was, and knowing what manner of man he was, take that into consideration as a fact in the case bearing upon the question of the probability of his guilt or innocence. It was on that theory that he undertakes to prove to you that his reputation for honesty and integrity was good.

By the reputation which you shall consider, the law means his general reputation in the community in which he lived, and not his reputation amongst a particular class of people which was not so large a class as to be general; and in considering this evidence you must determine whether or not it does prove that his general reputation in this community at the time in question was that of a man of honor and integrity and fair dealing. If it was, you are to take that into consideration along with the other evidence in the case, as a fact bearing upon the question of the probability of his innocence or guilt. But if you take all the evidence of the case into consideration, including the evidence as to his good character, and when
220 you have considered it all, if you are still satisfied that he is guilty, then it is your duty to convict him, no matter how good his character was; because good character, of itself, is not a defense to any criminal transaction.

The degree of certainty to which the proof must go in a criminal case is this: The jury must be satisfied of the defendant's guilt beyond a reasonable doubt. By that phrase "reasonable doubt" the law does not mean that it is to be regarded as a barrier behind which a juryman can shield himself from the performance of an unpleasant duty, if that duty is made clear to him by the evidence; but the law never demands a conviction as long as a rational doubt remains in the mind of the jury as to the defendant's guilt. In human affairs absolute certainty, in the very nature of things, is not always attainable. Moral certainty is all that can be attained to on many subjects. The jury must look to the evidence, and if that satisfies them, and produces in their minds a conviction of the defendant's guilt, to the point that they feel fully satisfied, then a mere captious or ingenious, artificial doubt is of no avail. But if, after a fair, candid consideration of all the evidence, the jury is not fully satisfied of the defendant's guilt, and find that there are only strong probabilities of guilt, then the only safe course is to acquit.

In dealing with cases of circumstantial evidence, a fair test of the existence of a reasonable doubt may be come at thus: After a jury has determined from the evidence the truth so that they feel that they know and understand the truth of all facts which are indicative of guilt, if they can fairly and reasonably reconcile those facts with the defendant's innocence, then he is entitled to be acquitted. But when the jury find a certain series of facts to exist, and are compelled to say to themselves: "These facts which we find to exist can not be true unless the defendant is guilty;" in other words, if there is a reasonable explanation of the facts which the jury find to be true except the theory that the defendant is guilty, then the jury have no reasonable doubt in that regard, and it is their duty to convict.

With respect to the form of your verdict, if you find the defendant guilty as alleged in the first count of the conspiracy indictment, you can *indet*ify that indictment by number, and announce him guilty as indicted in No. 24,688. That is the larger of the two. If you find him not guilty as charged in that indictment, you announce him not guilty in No. 24,688.

If you find him guilty of all the three charges as made in indictment No. 23866, you may announce him guilty generally as indicted. If you find him guilty of one or two but not of the other, then you regulate your verdict according to the numerical designation of the particular count. If you find him not guilty of all of the three counts you return a general verdict of not guilty with respect to that indictment.

Upon retiring, you will select from amongst your number your foreman, and when you have reached a verdict, announce it through him to the Court.

Counsel for the defendant requested me to make an instruction that I forgot, and I now give it to you:

221 "The jury are instructed that they are not to consider the letter of December 7th, 1903, from Mr. Aspinwall to the defendant, in evidence, as tending to prove the truth of any statement therein contained."

Mr. BAKER: If your Honor please, in speaking of the overt acts, I ask that you tell the jury that they would have to find one of the overt acts in the first count of that indictment.

Mr. WORTHINGTON: I think his Honor fully went over that.

The COURT: That is true. If counsel asks that, gentlemen, I must say to you in that regard that the first count of the conspiracy indictment alleges several overt acts. I mean by that that it alleges that Crawford presented the bill and secured the payment and then, as another, as I recall it, it alleges that he sent a part of the money to Lorenz. If you find any one of those acts was performed by him, and that it tended to move forward the object of the conspiracy, as I have pointed out, that is sufficient.

Mr. WORTHINGTON: There are one or two suggestions that I wish to make about the charge, and perhaps a single exception. Your Honor, in speaking as to the evidence of the Government tending to establish certain facts, said that unless the defendant's explanation was sufficient to explain away the significance of those facts, the jury would have to find such facts against him. I wish you would say that they are to consider in that connection not only the defendant's explanation, but anything that they may find in the evidence that may tend to explain them.

The COURT: Of course, gentlemen, when you are dealing with any fact I do not mean by what I said that you are to consider only the defendant's explanation of it. It may be that one fact about which you are in doubt is cleared up one way or the other by some other fact that you believe to be true. Does that cover your point, Mr. Worthington?

Mr. WORTHINGTON: Yes. I knew that you meant that, but I wanted it made perfectly plain to the jury.

One other thing on which your Honor spoke, about which the jury might misunderstand what was meant, although I do understand it: You said that as to that exhibit 124, that letter of January 17th, the Government claims that the letter was a fabrication by Crawford. Your Honor does not mean to say that the Government claims that Wade Chance's name was forged to it. I distinctly asked Mr. Baker in his argument to the jury whether he made that claim or not, and he said he left that point to the jury, and made no claim about it. The Government got the letter in evidence by proving that it was Chance's signature.

The COURT: The letter would have gone in on the other theory. It would have gone in on the question of comparison alone, if they had offered it on that ground.

Mr. WORTHINGTON: Does your Honor mean to let it stand that the Government claims that that letter is a fabrication, including Chance's signature?

222 The COURT: It is not with me to say whether or not the Government claims that Chance's signature is forged.

Mr. WORTHINGTON: The Government has made no such claim.

The COURT: Mr. Baker said he left that with the jury, without undertaking to make a positive claim on the subject.

Mr. WORTHINGTON: Your Honor does not mean to say that the Government claims that the letter is a fabrication, including Chance's signature, but that it is left to the jury?

Mr. BAKER: I will say that that is left to the jury.

The COURT: In using the term "fabrication," which was the term I used to the jury, I meant by it the contents of the letter, as entirely aside from any signature.

Mr. WORTHINGTON: That is what I thought your Honor meant. I wanted the jury to understand it.

Your Honor said to the jury: "If you find that this letter was prepared by Crawford." I think, if your Honor will allow me to suggest, that the proper expression would be: "If the jury are satisfied beyond a reasonable doubt that the letter was prepared by him." He does not have to show that he did not prepare it, but the Government has to show beyond a reasonable doubt that he did.

The COURT: You must ask a specific charge in that respect if you want any ruling upon it.

Mr. WORTHINGTON: Well, shall I write it?

The COURT: No.

Mr. WORTHINGTON: I ask your Honor to charge, then, as to the exhibit 124, the letter of January 17th just referred to, that the jury cannot take that exhibit into consideration against Mr. Crawford for any purpose unless they are satisfied by the evidence beyond a reasonable doubt that it was prepared by him or that he participated in its preparation.

The COURT: That charge is denied.

Mr. WORTHINGTON: And your Honor will allow me an exception.

The COURT: The jury must only be satisfied of ultimate facts to the degree of being satisfied beyond a reasonable doubt, and not with respect to items of evidence.

Mr. WORTHINGTON: Then I wish to take an exception, and that is the only real exception that I take to your Honor's charge with respect to what you said about McGregor being charged with the approval "in any respect" of bills against the United States concerning payments for these satchels and shoulder straps. As to that expression " in any respect" I would like an exception. Also as to what your Honor said, that if Crawford knew the routine of the Department, as to what the effect would be, I desire an exception.

Then, your Honor, as to the instructions, I believe no formal notice of the exceptions has been made.

The COURT: They are all noted. I have noted the exceptions on all of them.

Each of the foregoing exceptions was duly taken by counsel for the defendant at the time it appears to have been taken, and before the jury retired to consider their verdict, and was at the time
223 noted by the presiding Justice upon the minutes of the court, and the defendant, by his counsel, prays the court to sign this his bill of exceptions, which is done accordingly this 1st day of May, 1906, now for then.

DAN THEW WRIGHT, *Justice.* [SEAL.]

Service of copy & exhibits acknowledged this 31 day of Jan. A. D. 1906.

D. W. BAKER.

EXHIBIT A.

JUNE 5, 1902.

To the Honorable First Assistant Postmaster-General, Washington, D. C.

SIR: We have the honor to submit herewith in accordance with Department Advertisement of May 3rd, 1902, attached, and Department specifications furnished in connection therewith, the following bids for carriers' and collectors' satchels, the same to be made of other materials than those mentioned as allowed under said specifications.

We substitute for the ordinary leather which has been used in the past, "Fabrikoid" or "Pegamoid" leather for the following reasons:—

1st. Because it is absolutely waterproof and therefore never increases in weight after being wet. Attention is respectfully called to the great advantage of such a satchel for rural service where they are not only subjected to rainstorms but are apt to be soiled by mud or otherwise. The rural satchel being larger than that used by city carriers would be very burdensome when wet, if made of the ordinary leather heretofore used.

2nd. Because it is very durable, will not chip, peel, or rot as shown by United States Navy test attached. Marked Exhibit "A."

3rd. Because it is entirely free from oil and grease and will therefore not soil or damage the carrier's uniform; and because it can be wiped off with a damp cloth or sponge and kept as clean and fresh

as when new. The present satchels made of the ordinary leather have none of these advantages.

4th. Because satchels made of it are much lighter in weight than those at present used and will relieve the carrier of so much unnecessary burden.

5th. Because it has been adopted after severe test (attached) in competition with all other materials, as the standard material to be used in the United States Navy where a waterproof and durable article is required and where heretofore ordinary leather has been in use.

The prices for satchels made of the above-mentioned material as per samples follow:

Class A.	Class B.	Class C.	Class D of duck according—specifications.	Class E of duck according—specifications.
$2.19	$3.16	$3.15	$2.00	$2.75

224 This company has also submitted samples of a new construction for satchel which is designed to relieve the carrier of the present inconveniences resulting from an unusually distributed weight, and the much deplored consequences resulting therefrom. We have given this subject careful thought and we feel that the Department will welcome any improvement that will lessen the burden and preserve the physique of the uniformed men of the Postal Service. The patent design for satchels submitted, consisting of two satchels, instead of one, can be furnished at an additional cost of 30 per cent. over the above prices.

There are several low grade materials in the market which are imitations of the above mentioned leather. Satchels made of either one of which can be furnished at from 40 per cent. to 60 per cent. below prices quoted, but none of these materials were found satisfactory under the United States Navy Department tests attached, Exhibit "A," and could not, therefore, be recommended by this company as absolutely waterproof, durable and satisfactory in every other way.

We have therefore submitted quotations on the only material that has been found to be superior to the ordinary leather heretofore used for the various purposes of the Navy Department and adopted by that branch of the Government.

Very respectfully,

POSTAL DEVICE AND LOCK COMPANY.

(Signed) WADE CHANCE, *President.*

EXHIBIT B.

"Rural F-827—HLM.

Central Board of Civil Service Examiners, Rural Carrier Service, # 508 Star Building.

WASHINGTON, *June* 17, 1902.

Honorable H. C. Payne, Postmaster-General, Washington, D. C.

SIR: Your Committee, to which was referred the duty of receiving and opening bids for letter carriers' satchels submitted in response to advertisement of May 3, 1902, in pursuance of your order of June 6, 1902, beg to report as follows:

All of the members being present, the following bids were opened, at 12 o'clock, noon, June 6, 1902, in the presence of several of the bidders or their representatives, and the prices at which each bidder was willing to furnish the articles called for in the proposal of May 3, 1902, were found to be as follows:

225

Bidder.	Bid and class.					
	"A."	"B."	"C."	"D."	"E."	Whole.
U. S. Trading Co., New York, N. Y	$2.59	$3.69	$3.69	$2.21	$2.97	$15.15
Postal Device and Lock Co., New York, New York	2.19	3.16	3.15	2.00	2.75	13.25
F. Coit Johnson, New York, N. Y	2.12	2.60	2.65	1.74	2.10	11.21
John Boyle & Co., New York, N. Y	2.59	2.88	3.17	2.58	3.34	14.56
Baltimore Bag Co., Baltimore, Md	2.09	2.60	2.90	1.90	3.40	12.89
Jacob Rupp, Baltimore, Maryland	1.75	2.65	3.00	1.75	3.50	12.65
Maurice Runkle, Long Island City, N. Y	2.75	3.23	3.34	1.81	2.46	13.59
L. J. Stern, Baltimore, Maryland	1.94	2.85	2.95	1.85	2.90	12.49
Do	2.30	3.20	3.20	2.00	3.00	13.70
Headley & Farmer Co., Newark, N. J	3.65	4.43	4.29			
Do	3.23	4.01	3.79			
*William Taylor, Lyons, N. Y.	2.68	3.26	3.45	1.96	2.56	14.10

*Received too late for consideration.

It will be seen that the lowest bidder as a whole is F. Coit Johnson, of No. 110 Worth Street, New York. Information from several sources reached your Committee to the effect that the bid of Mr. Johnson was made upon the basis of the work being performed by prison labor, and, to ascertain as to its truth, Mr. J. D. King, Chairman of the Committee, called personally on Mr. Johnson at his place of business, on Saturday, June 14, 1902, and was informed by Mr. Johnson that the contract, if awarded to him, would be fulfilled by prison labor, at Trenton, New Jersey, penitentiary. Your Committee, therefore, recommend that his bid be rejected, as we do not feel that convict labor should be brought into competition with the honest labor of law abiding citizens.

The next lowest bid, as a whole, is that of L. J. Stern, of Baltimore, Maryland. Mr. Stern is the present contractor. In view of the fact that he has not fulfilled his present contract in a satisfactory manner to the Department, we recommend that his lowest bid be rejected. His bid (No. 2) based on a quality of leather to be acceptable to the Department will be seen is higher than that of some of the other responsible bidders.

When it was determined by your Committee that Mr. King should investigate the charges against Mr. Johnson, he was also requested to ascertain the responsibility of the bids submitted by Baltimore Bag Co., and Jacob Rupp, both of Baltimore, Maryland. It was found that the Baltimore Bag Co. is controlled by Maurice Stern, a brother of the present contractor, and that Jacob Rupp is a shoemaker in Baltimore, and for some time has been in the employ of L. J. Stern, the present contractor; and that neither of these bidders have any business connection with any bag manufacturing establishment, unless it be with the present contractor, and your Committee feel that, notwithstanding Mr. Maurice Stern's statement to the contrary, that all three bids are in the identical interest of the present con-
226 tractor. The close resemblance of the figures submitted by them, which it will be seen have the semblance of jugglery and collusion, caused your committee to look into the matter with the result stated. We are, therefore, persuaded that all of these bids should be rejected, and we so recommend.

The next lowest bidder for the satchels A, B, and C is John Boyle & Co., of New York, N. Y., and there can be no doubt as to their responsibility, but their bid for canvas satchels, D and E, is much higher than Maurice Runkle, of Long Island City, N. Y. Therefore, should it be determined to award the contract to John Boyle & Co., for leather satchels, we would recommend that items D and E be awarded to Mr. Runkle.

In the printed proposal for satchels, and next to the last paragraph, we find as follows:

"Proposals to furnish satchels of other materials than those specified in these specifications will be considered if it is shown that the materials are better adapted for satchels used in the free delivery service."

In this connection: A single bid was received from the Postal Device & Lock Company, of New York, to furnish satchels of a substance known as "Pegamoid" or "Fabrikoid," and after careful inquiry and tests as to the strength and durability of the material, we are of the opinion that satchels made of this material will be as cheap and better adapted for the demands of the service than leather. It is but little more than half as heavy as the satchel manufactured from leather, which is an item well worth considering. It is absolutely waterproof, insuring protection from rain. Copies of the reports of the tests by the Navy Department, which were made to determine its strength and durability, have convinced us that the material is well adapted for the purpose for which it would be used if manufactured into satchels.

We are, therefore, of the opinion that the contract should be awarded to the Postal Device and Lock Company of New York, for

the manufacture of satchels scheduled A, B, and C, as the total of their bid for the articles scheduled is the lowest responsible proposal; and that those scheduled D and E be awarded to Maurice Runkle, of Long Island City, N. Y., and we so recommend.

In relation to the material to be used in the manufacture of satchels scheduled D and E, we wish to submit it as our opinion that, on account of its lightness and its waterproof qualities, "Pegamoid" would be much more desirable for use in their manufacture but as no bid is submitted for any material other than canvas, we made the recommendation indicated above.

The bids enumerated in the foregoing, together with other papers relating thereto, are enclosed herewith.

Very respectfully,

JOHN D. KING.
E. SPEICH.
JAMES E. BELL.

Approved:
H. C. PAYNE,
Postmaster-General.
R. J. W.

227 EXHIBIT C.

Contract, dated June 25th, 1902, between the United States of America, of the first part, and the Postal Device and Lock Company, a New Jersey corporation, of the second part.

Recites advertisement for bids, and that the specifications annexed to the contract are the specifications referred to in the advertisement. Recites that certain proposals were made for supplying letter carriers' and collectors' satchels in such quantities and from time to time as ordered for a period of four years, beginning July 1st, 1902, and ending June 30th, 1906; and that the party of the second part had been found to be the most advantageous bidder, and that its bid was accepted for $2.19 for carriers' satchels of Class A; $3.16 for letter carriers' satchels of Class B; and $3.15 for collectors' satchels of Class C, all to be made of pegamoid or fabrikoid leathers.

Party of second part agrees to furnish and deliver at such prices in such quantities and from time to time as ordered, letter carriers' satchels and collectors' satchels conforming to the specifications attached—the satchels to be made of fabrikoid or pegamoid leathers and to be delivered as directed by the Department; and to be subject to inspection.

The party of the first part to pay the party of the second part at the rate of $2.19 for carriers' satchels of Class A; $3.16 for carriers' satchels of Class B; and $3.15 for collectors' satchels of Class C; payments to be made on delivery of each lot and quantity ordered.

Party of the second part agrees that if it fails in any respect to comply with its contract, it shall become liable into the United States of America in the sum of $15,000.00, and shall be liable to be sued therefor in any court of competent jurisdiction.

Right reserved to the Government in case of failure of the party of the second part to furnish satchels within reasonable time to have the Postmaster General purchase such satchels in open market, and charge the excess expended to the party of the second part.

Right reserved to the Postmaster General of inspection and rejection of any satchels in accordance with specifications, and provision that in the event that the exigencies of the public service required it, the Postmaster General might accept inferior satchels supplied by the party of the second part and make a corresponding deduction from the contract price.

The Postmaster General given the right to annul the contract, if the party of the second part fails in any respect to perform its contract, and provision that such action shall not affect or impair any right or claim of the United States to damages for breach of contract by the party of the second part.

No member of Congress to be interested in the contract, referring to sections 3741 and 3737 of the Revised Statutes of the United States.

Postmaster General to have the right at any time to call for additional security.

228 Contract signed by H. C. Payne, Postmaster General and by Postal Device and Lock Company, by Wade Chance, President. Initials A. W. M. and R. J. W. under signature of Postmaster General.

EXHIBIT D.

Agreement, Made this 23rd day of September, 1902, by and between the Fabrikoid Company, of Newburgh, N. Y., a New York corporation, successor to the New York Leather and Paint Company, of New Jersey, party of the first part, and The Postal Device and Lock Company, a New Jersey corporation, party of the second part, witnesseth:

Whereas, The part- of the second part has been awarded a contract for the manufacture of letter carriers' satchels or mail bags by the Post Office Department of the United States Government for the period of four years next succeeding July 1, 1902; and

Whereas, The said party of the second part desires to purchase of the party of the first part and the party of the first part desires to furnish to the party of the second part material for the manufacture of such bags;

Now, in consideratio f the premises and the mutual agreements of the parties hereinafter set forth, it is hereby covenanted and agreed between the parties hereto as follows:

First. The party of the first part will furnish and deliver f. o. b. Newburgh, N. Y., as may be required to fill promptly the orders of the United States Government under contract dated June 25, 1902, between the Postmaster-General of the United States and the party of the second part at and for the prices hereinafter agreed upon to be paid therefor by the party of the second part, in such quantities and

at such times as may be ordered by the party of the second part the following mentioned material or materials, to wit:

Pegamoid or Fabrikoid Leathers.

No. 1800, 54 in. wide; same 36 in. wide.
No. 2000, 50 in. wide; same 36 in. wide.

for the period of four years from and after the 1st day of July, 1902, such materials to be in all respects equal to the samples thereof heretofore furnished by the party of the second part from which samples certain letter carriers' bags have already been constructed, said materials to be well and securely packed for transportation and to be delivered f. o. b. at the sole risk and expense of the said party of the first part, to the said party of the second part.

Second. It shall constitute prompt delivery on the part of the party of the first part under this contract if the said party of the first part shall within one week after the receipt by it of the order of the party of the second part, ship the materials so ordered by the party of the second part, but the said party of the first part shall not
229 be required to deliver more than 5,000 yards of materials in any one week although it shall be optional with the said party of the first part to deliver a greater amount if the said party of the second part has placed an order therefor.

Third. The party of the second part agrees to pay to the party of the first part for all Pegamoid or Fabrikoid leathers ordered by the said party of the second part and furnished to it by the said party of the first part, the following prices, to wit:

For No. 1800, 54 in. wide, $1.12½ per yard; 36 in. wide 75¢ per yard, 15 per cent. discount with 2 per cent. additional for cash at ten days:

For No. 2000, 50 in. wide 80¢ per yard; 36 in. wide 60¢ per yard, 10 per cent. discount with 2 per cent. additional discount for cash at ten days.

Upon delivery of each lot or quantity of material or materials as aforesaid to the party of the second part, the party of the second part shall pay the party of the first part therefor at the rate hereinabove mentioned and within three months' time after such delivery. In the event, however, that the party of the second part shall have received payment from the United States Government for satchels or bags manufactured from such leathers so delivered within ninety days after delivery of such leathers to them by the party of the first part, the party of the second part shall upon the receipt of such payment from the United States Government pay the party of the first part the amount due it without further delay.

Fourth. Receipt by the party of the second part of material shipped to it by the party of the first part and the cutting up of said material by the party of the second part for the manufacture of bags shall be deemed an acceptance of the quality of material so received and used under the terms of this contract, unless the party of the second part shall within thirty days after said receipt notify the party of the first part that the material so received or so cut up, does not conform with the requirements of this contract, and in said notice

the said party of the second part must specify wherein the said material fails to conform with said requirements. The party of the first part shall in no case incur any liability arising from or out of defective material or inferior material, beyond the replacing of such material found to be defectve or inferior in quality, after said defective or inferior material has been cut up.

In case of disagreement between the parties of the first and second parts as to whether or not the Fabrikoid leather furnished by the party of the first part to the party of the second part is up to the standard required by this contract, the decision of any Post-Office employee designated by the Post-Office Department or proper officer thereof to inspect the Fabrikoid material and bags made from the same, as to the quality of any and all Fabrikoid leather furnished under this agreement shall be final and the parties to this agreement hereby bind themselves and each of them to submit thereto.

Fifth. This contract may be annul-ed by the party of the second part upon the failure of the party of the first part to perform any of the Covenants, Agreements or Stipulations herein ex-
230 pressed, or upon a wilful attempt by the party of the first part to impose upon the party of the second part materials inferior to those required by this contract, and the said party of the first part expressly agrees that at the termination of said contract as aforesaid or upon any action rightfully taken by the party of the second part in pursuance of this stipulation, any right or claim of the party of the second part for an indebtedness or damage for breach of any of the covenants of this contract by the party of the first part, shall not be affected or impaired. The party of the first part shall, however, have the power to declare this contract null and void in all respects upon the failure of the party of the second part after due notice to perform the conditions hereinbefore expressed regarding the time and manner in which payment is to be made by the party of the second part to the party of the first part for materials delivered. Due notice to be given of the intention to annul this contract ten days before said contract shall be annul-ed, said ten days to begin to run from and after any default by the party of the second part.

Sixth. The parties hereto hereby bind themselves, their heirs, executors, administrators, successors and assigns to the faithful performance of this contract, and all the covenants, agreements, and stipulations thereof.

In witness whereof, The parties hereto have hereunto set their hands and seals the day and year first above written.

FABRIKOID COMPANY, [SEAL.]
By JOHN ASPINWALL, *President.*
POSTAL DEVICE & LOCK CO. [SEAL.]
WADE CHANCE, *President.*

In the presence of—
As to the Postal Device & Lock Co.:
C. F. ABBOTT.
WM. GORDON CRAWFORD.
As to the Fabrikoid Company:
H. HALDANE.
WM. C. CHAMBERS.

Endorsed on the Back.

"I hereby guarantee payments to the Fabrikoid Co. by the Postal Device & Lock Company in accordance with the terms and conditions of this contract.

SPENCER TRASK.

Witness:
WM. GORDON CRAWFORD.

231 EXHIBIT E.

This memorandum of agreement made and entered into this 12th day of August, A. D. 1902, by and between the Postal Device & Lock Company, of New Jersey, party of the first part, and The Wm. H. Wiley & Son Co., of Hartford, Connecticut, party of the second part, witnesseth:

Whereas, the party of the first part has been awarded a certain contract for the manufacture of letter carriers' satchels by the Post Office authorities of the United States Government;

And whereas, the party of the second part is desirous of manufacturing said letter carriers' satchels, and to that end has submitted to the party of the first part certain sample satchels, style "A" and "B" hereinafter referred to as "A" and "B" satchels;

Now, therefore, in consideration of the premises and of the mutual covenants and agreements of the parties aforesaid, it is hereby covenanted and agreed between the said parties of the first and second part as follows:

1st. The said party of the second part hereby covenants and agrees to and with the said party of the first part that it, the said party of the second part, shall and will manufacture and deliver to the said party of the first part in the manner hereinafter provided and at and for the prices hereinafter agreed to be paid therefor by the said party of the first part, and in such quantities from time to time during the period of one year from the date of this contract, as may be ordered by the said party of the first part, not to exceed one hundred and twenty-five a day, certain letter carriers' satchels, styled "A" and "B." The said "A" and "B" satchels to be manufactured in accordance with the Government specifications hereunto annexed, with the exceptions and corrections noted thereon, marked satchels, "class "A" and class "B" and made a part of this contract, and to be in all respects equal to the samples thereof heretofore furnished by said party of the second part to the said party of the first part; the said letter carriers' satchels to be well and securely packed and to be delivered as follows:—

The "A" and "B" satchels to be delivered in quantities as ordered by the said party of the first part as hereinbefore provided to the Postmaster at Hartford, Conn., a registry receipt being taken for each shipment of satchels so delivered and said registry receipts to be delivered to the party of the first part and to be conclusive evidence of such deliveries; ordinary mail sacks as called for to be furnished to the party of the second part by the said postmaster at Hartford,

Conn., wherein the said "A" and "B" satchels are to be packed before they are delivered to the said postmaster. All of the said "A" and "B" satchels to be delivered as herein provided at the sole risk and expense of the said party of the second part, and free of all charges to or against the said party of the first part; and the said party of the second part further agrees that it, the said party of the second part, shall and will, for the amounts hereinafter stated, furnish all materials used in the manufacture of said "A" and "B"
232 satchels with the exception of "Pegamoid" or "Fabrikoid" leathers, used for the body of the satchel proper, which said leathers are to be furnished by the party of the first part as hereinafter provided.

It being distinctly understood and agreed between the parties hereto that the said party of the second part shall receive orders from the party of the first part, from the orders received by said party of the first part from the United States Government, to the extent of at least eight thousand "A" satchels and five thousand "B" satchels, provided the same are manufactured in accordance with the specifications hereto annexed, marked satchels class "A" and class "B" with the exceptions and corrections noted thereon, and equal to the samples hereinbefore mentioned, and which are signed by each party to this agreement.

2nd. The said party of the first part covenants and agrees to and with the said party of the second part to pay to the said party of the second part the sum of 55 cents for each "A" satchel and the sum of 55 cents for each "B" satchel ordered by said party of the first part and furnished by said party of the second part in accordance with this contract, payments as aforesaid to be made before the 15th day of each month during the continuance of this contract, net cash, for each lot or quantity of said satchels manufactured prior to the 15th day of the preceding month, a bill or statement having been rendered for said satchels so manufactured upon the 1st day of every month. The said payments aforesaid are to be guaranteed by Spencer Trask, of No. 27 Pine St., New York City, New York. The party of the first part further agrees that the Fabrikoid and Pegamoid leathers used or required to be used in the manufacture of said letter carriers' satchels, as per said samples and specifications, will and shall be furnished and delivered to said party of the second part, by said party of the first part, free of all charges to or against said party of the second part.

It is further agreed between the parties hereto that should said party of the second part at any time during the continuance of this contract fail to manufacture and deliver satchels ordered as provided herein, said party of the first part shall be at liberty to obtain said satchels so ordered and not delivered in the open market, and charge any excess of cost above the aforesaid contract price to said party of the second part, provided that said failure of the said party of the second part to manufacture or deliver said satchels is not due to delay in the delivery of Fabrikoid or Pegamoid material by the party of the first part, who is to be notified of the amount of said Fabrikoid or Pegamoid material required from time to time at least nine days

before date of delivery of said material is desired by the party of the second part.

And for the faithful performance of this contract and each and every of its covenants, agreements and stipulations therein on their part performed, the parties hereto bind themselves, and each of them, their and each of their successors and assigns.

233 In witness whereof, the said parties have hereunto caused their corporate name and seal severally to be affixed by their proper officer thereunto duly authorized.

POSTAL DEVICE & LOCK COMPANY.
WADE CHANCE, *Pres't.* [L. S.]
THE WM. H. WILEY & SON CO.
W. H: CORBIN, *Treas.* [SEAL.]

Signed and sealed in the presence of—
JOSEPH P. MOLLOY.
WM. G. CRAWFORD.
R. M. DOW.
D. M. BROWN.

I hereby guarantee payments by the Postal Device and Lock Company according to the terms and conditions of this contract.
SPENCER TRASK.

Witness:
WADE CHANCE.

EXHIBIT F.

"SEC. 17. To the First Assistant Postmaster-General is assigned the general management of post-offices and the instructions of postmasters, except as otherwise provided in these regulations; the adjustment of salaries of postmasters at Presidential offices; the authorization for allowances for rent, clerk hire, and other expenditures, connected with post-offices; the furnishing of general supplies for post-offices and the postal service, and stationery supplies for the Post-Office Department; the Free Delivery, Rural Free Delivery, and Special Delivery Services, the Money Order System and the Dead-Letter Office; the correspondence of the Department with postmasters and the public not assigned to other offices; the giving of general information concerning the postal service, and the performance of certain other miscellaneous duties."

"5. The Division of Free Delivery, under the supervision of the General Superintendent of the Free Delivery System, is charged with the general direction of the consideration and preparation of regulations for the government of the Free Delivery Service, which includes the city, rural free delivery, and special delivery services, and prepares cases for the appointment of letter carriers and rural carriers, for allowances for carrier delivery furniture, letter and package boxes, collection wagon service, carriers' equipments, and incidental expenses; the preparation of cases for the establishment of new service

and the extension of existing service. The assistants superintendents of free delivery service make personal investigations and reports upon matter assigned to the division, which may be referred to them for that purpose."

Section 66 of the same volume is an extract from the revised statutes of the United States, Section 3735, and provides:

"It shall not be lawful for any of the Executive Depart-
234 ments to make contracts for stationery or other supplies for a longer term *the* one year from the time the contract is made."

Under that, as sub-section 4, it is provided:

"The Postmaster-General may, when if in his judgment the good of the service so requires make contract for necessary supplies for the free-delivery service for a period not exceeding four years."

The next section which we desire to bring to the attention of the jury is section 68, which reads as follows, being an extract from the revised statutes of the United States:

"All purchases and contracts for supplies or services, in any of the Departments of the Government, except for personal services, shall be made by advertising a sufficient time previously for proposals respecting the same; when the public exigencies do not require the immediate delivery of the articles, or performance of the service. When immediate delivery or performance is required by the public exigency the articles or service required may be procured by open purchase or contract, at the places and in the manner in which such articles are usually bought and sold, or such services engaged, between individuals."

Section 71 reads:

"Advertisements shall be prepared and published before the expiration of an existing contract, inviting proposals, for printing post route maps and the Official Postal Guide.

"2. Chief Clerk of the Post Office Department will supervise the printing of the Official Postal Guide."

SEC. 72. The advertisement for * * * proposals (for fuel, ice, stationery, and other miscellaneous supplies, to be purchases at Washington for the use of the Executive Departments and other Government establishments) shall be made — all the Executive Departments, including the Department of Labor, the United States Fish Commission, the Interstate Commerce Commission, the Smithsonian Institution, the Government Printing Office, the government of the District of Columbia, and the superintendent of the State, War and Navy building, except for paper and materials for use of the Government Printing Office, and materials used in the work of the Bureau of Engraving and Printing, which shall continue to be advertised for and purchased as now provided by law, on the same days and shall each designate two o'clock post meridian of such days for the opening of all such proposals in each department and other Government establishment in the City of Washington; and the Secretary of the Treasury shall designate the day or days in each year for the opening of such proposals and give due notice thereof to the other departments and Government establishments. Such proposals shall be opened in the usual way and schedules thereof

duly prepared and, together with the statement of the proposed action of each department and Government establishment thereon, shall be submitted to a board, consisting of one of the Assistant Secretaries of the Treasury and Interior departments and one of the Assistant Postmasters-General, who shall be designated by the heads of said departments and the Postmaster-General, respectively, at a meeting to be called by the official of the Treasury Depart-
235 ment, who shall be chairman thereof, and said board shall carefully examine and compare all the proposals so submitted and recommend the acceptance or rejection of any or all of said proposals. And if any or all of such proposals shall be rejected, advertisements for proposals shall again be invited and proceeded with in the same manner."

"SEC. 73. Advertisements shall be prepared and published prior, to the beginning of each fiscal year, as provided in the preceding section, inviting proposals for furnishing articles and materials, and the performance of work of all kinds, needed for the Post Office Department, whenever the same can be more advantageously obtained by contract. Orders upon contractors for such supplies or work shall be made in pursuance of requisitions therefor, approved by the Chief Clerk of the Post-Office Department, and allowed by the Postmaster-General."

"SEC. 76. Advertisements shall be prepared and published prior to the beginning of each fiscal year, or before the expiration of an existing contract, inviting proposals for furnishing supplies for the use of the postal service."

EXHIBIT G.

NEW YORK, N. Y., *December* 1, 1902.

The Post Office Department, Washington, D. C., Dr. to The Postal Device and Lock Co., New York, N. Y.

Order number D	Post office at which delivery made.	Class A satchel, at $2.19.	Class B, at $3.16	Class C, at $3.15.
1	Adams, Mass.	2		
*	* *	*		
269	Lawrence, Mass.	12		
		2503	Class A, at $2.19..	$5481.57

Received payment,

POSTAL DEVICE & LOCK CO.
WADE CHANCE, *Pres'd't.*

Correct:
F. W. McG.

236 EXHIBIT H.

NEW YORK, *Sept.* 3*d*, 1902.

U. S. Post Office Department, Rural Service, Bought of Geo. D. Lamb, Manufacturer of Lamb's National Strap Fastener and Leather Straps of All Kinds; Office, 192 Fulton Street.

Hitchlines, Neck Straps Bicycle and Trunk Straps. Patented. Shawl, Package Book, Tourist and Skate Straps.

Terms: Bills not paid when due subject to sight draft without notice.

Shipped by —— ——.

500 (Small) Shoulder Straps for Carriers' Satchels @ 39½c.. 197.50
500 (Large) " " for collectors' Satchels @ 39½c.. 197.50

$395.00

Order F. S. 7358–C.
In duplicate.
Consigned by mail to Free Delivery System, Busch Building, Washington, D. C.
Received payment,
GEO. D. LAMB.

Rec'd Aug. 30, 1902.
A. B. O.

Supplies furnished in accordance with this bill.
THOS. W. McGREGOR,
Clerk in Charge.

NEW YORK, *Nov.* 1, 1902.

U. S. Post Office Department, R. F. D. Service, Bought of Geo. D. Lamb, Manufacturer of Lamb's National Strap Fastener and Leather Straps of All Kinds; Office, 192 Fulton Street.

Hitchlines, Neck Straps, Bicycle and Trunk Straps. Patented. Shawl, Package Book, Tourist and Skate Straps.

Terms: Bills not paid when due subject to sight draft without notice.

Shipped by —— ——.

10,000 No. 2 National Carriers' Straps @ 15c..... 1500.00

$1500.00

Order F. S.–4389—R.
Consigned to Rural Free Delivery Service, 708 E St., N. W., Washington, D. C.
In duplicate.

237 Delivered Oct. 25th, 5000,
Nov. 1st, 5000.

Received payment,
GEO. D. LAMB.

Rec'd Octo. 28—5000,
" Nov. 3—5000.
Supplies furnished in accordance with this bill.
THOS. W. McGREGOR,
Clerk in Charge.

NEW YORK, *Nov.* 18, 1902.

U. S. Post Office Department, Rural Service, Bought of Geo. D. Lamb, Lamb's National Strap Fastener and Leather Straps of All Kinds; Office, 192 Fulton Street.

Hitchlines, Neck Straps, Bicycle and Trunk Straps. Patented. Shawl Package Book, Tourist and Skate Straps.

Terms: Bills not paid when due subject to sight draft without notice.
Shipped by —— ——.

5000 Shoulder straps for Carriers' Satchels @ 39½c..... $1975.00

1975.00

In duplicate.
Order F. S. 8081–C.

Delivered—
4,500 consigned to Busch Building, Washington, D. C.
500 " to Hartford, Conn., for Rural Free Delivery Service.

Received payment,
GEO. D. LAMB.

Rec'd from Octo. 1 to Nov. 19.
A. B. O.

Supplies furnished in accordance with this bill.
THOS. W. McGREGOR,
Clerk in Charge.

238 NEW YORK, *Dec.* 20, 1902.

U. S. Post Office Department Bought of Geo. D. Lamb, Manufacturer of Lamb's National Strap Fastener and Leather Straps of All Kinds; Office, 192 Fulton Street.

Hitchlines, Neck Straps, Bicycle and Trunk Straps. Patented. Shawl Package Book, Tourist and Skate Straps.

Terms: Bills not paid when due subject to sight draft without notice.
Shipped by —— ——.

5000 (Small) Shoulder Straps for Carriers' Satchels @ 39½c.. 1,975.00
2500 (Large) " " " Collectors' " " 39½c.. 987.50

$2,962.50

Consigned to [Rural]* Free Delivery Service, 708 E Street, N. W., Washington, D. C.
Order F. S.–4381—R.
In duplicate.

Received payment,
GEO. D. LAMB.

All rec'd.
A. B. O.

Supplies furnished in accordance with this bill.

THOS. W. McGREGOR,
Clerk in Charge.

EXHIBIT I.

"1208 18TH ST., *April 29th*, 1902.

MY DEAR CHANCE: My man from the West (Ohio) an Expostmaster, has been here and has agreed to go in with me on the mail bag contract I wrote about. I feel that with his experience and knowledge of the matter we will have an excellent chance to secure the contract. He came on to Washington to see me and we talked the matter over and made plans. He wanted a larger percentage of the profits than half! As the average selling price for the last contract was under $2.50 I do not think the profit could be over 20% which would be 50¢ per bag. I therefore suggested that we would agree to giving him all he could make per bag over 25¢ which was to be paid to us first. This is a sure proposition, I thought, for us, as the price of materials may increase during the 4 years of the contract. Of course he may manage to make more than 50¢ per bag.—he evidently expects to do so, as he accepted the proposition to pay 25 cents per bag out of the first profits, and insisted on a larger
239 percentage than ½ before I made the above proposition. I believe that to associate Mr. Lorenz is of great advantage and that he would not be apt to secure the contract otherwise. As this is an unexpected source of revenue I concluded to do all possible to secure it, and hope Mr. Trask will think it well. I expect the income will be at least 1200 a year. The bids on these bags have always been very close in the past. They are made of leather and some of canvass or duck. We propose to submit various samples of *qualities* and styles if the specifications permit. In the past they have always been very exacting in detail.

I will write again soon and expect to come on early in May.

Yours truly, WM. G. CRAWFORD."

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"F. R. H.

[* Words enclosed in brackets erased in copy.]

"1208 18TH ST., *May* 19, 1902.

"DEAR CHANCE: Yours of Saturday just received. It was impossible for me to make any engagement in advance to see you, as I did not know when I could get through at Hartford. I expected to leave there Thursday night, but had to stay over until Friday, & did not reach N. Y. until late Friday, when I missed you. You can't imagine how much work there is & data to collect in connection with the bag contract. I think if we can get that & make something out of it, even if it is only enough to pay part of the Co. expenses, I am doing well, because it gives us an advantageous position with the Gov. & we can better work in our patented bag. I should have like- to have called with you on Mr. Stern but it is really not necessary. The thing to do is to get his opinoin as to its value (the Code wheel.) He could tell whether it is useful, something that is needed & there is a demand for. I did not understand that he was to be interested in it financially. I shall have to come on about the bag contract again, as soon as I have some more information here & expect to come the end of the week. As I wrote our arrangement with Mr. Lorenz of Ohio provides that we are to get 25 per bag profit he to receive any balance of profit. He wanted more on the percentage plan than half & it seems to me that at present prices the profit can't be even 50 cents each. It is a question whether we can get that much & I thought as I wrote that to settle on a certain amount per bag would be safe, & might turn out to be a large percentage of the profit after all. I am glad to hear of the possible trip to Europe in store for you & hope you may be able to do something with the device. You should also take our new ordinary box. It is a good one. The one we get a Royalty on. Of course it would be better to have the box when still further simplified, but this would mean delay & there is no reason why you should not try to do something with it as it is as you are going over. We are not in as good shape for it as we will be by next winter but you could perhaps get a start now.

Hoping to see you in a few days,
Yours sincerely,
WM. G. CRAWFORD."

MAY 28.

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MY DEAR CHANCE: Enclosed I send you a copy of the agreement with Ohio party on the bag contract I am trying to get. Mr. Trask did not seem to think it amounted to much but I am very anxious to get it. Mr. Lorenz wants the President of the Co. to sign the agreement so I have prepared another for your signature. Please sign Co. name & then yours as President as shown by pencil. I can rub that out afterwards. Have two *witnesses* sign for you where finger points & return paper *immediately*. It is not necessary for you to date agreement or put a seal as I have Co. seal here and can put in date he signs. I have been detained here on this matter but will have to come on next week & will see you then. I hope you have had time to see about the code wheel.

Yours t'ly,
WM. G. CRAWFORD."

"WASHINGTON, D. C., *June 6th*, 1902.

DEAR CHANCE: Your note received also reports enclosed. I send you a letter which I would like you to have written on firm paper of S. T. & Co., signed, sending same with a copy to me. If you come over, bring same & I shall be glad to see you.

The bids were opened today and I think our proposal created a good impression. We were below Boyle of N. Y. our main competitor. I look for a decision early next week, probably by Wednesday, & I shall be greatly disappointed, after all the work done, if we do not get something.

Y'rs tr'ly, WM. G. CRAWFORD."

[The Di-Brazza]* Postal Device & Lock Company, Bowling Green Offices, 11 Broadway,

[NEW YORK,]* *June* 9.

MY DEAR CHANCE: It looks as if we had a good chance to get the contract now. The Committee seemed much interested in my statement made this morning & my various tests. They have ordered out satchels tried by P. O. here until next meeting. Next Wednesday. This seems favorable. In case we get the contract must I obtain the 15,000 bond from a Surety Co. or will Mr. Task arrange for same? 2 good & sufficient sureties will be accepted in place of Surety Co. if we desire it.

I did not say anything about the letters to Dept. when I saw you as I had not made it a point to do so for the reason that Wednesday would be time enough for letters. They should be on firm paper.

In haste, yours truly, WM. G. C.

Kindest messages to Mr. & Mrs. Trask."

241 Post Office Department, First Assistant Postmaster General, Office of Gen'l Supt. Free-Delivery System, Division of City Delivery.

WASHINGTON, *June 19th*, 1902.

DEAR CHANCE: Will you be the bearer of the good news to Mr. Trask that we have been awarded the leather satchel contract. There will be used as near as I can make it out at least 10,000 satchels a year & probably 12,000. This contract is for four years beginning July 1st, next, so that at 25¢ per satchel profit the Co. will have a revenue of $2500 a year for four years from this source.

I would like to know immediately what days this week & next Mr. Trask will be in N. Y. so that I may see him to go over matters. I expect that the contract papers will be drawn tomorrow Friday & I will arrange for the Bond in Senator Platt's Co., that is to say, the one his son is an officer of. I don't think it would be possible for me to get things in shape before Friday night & doubt that Mr. Trask will be in New York Saturday, however let me know the days he will be there.

[*Words enclosed in brackets erased in copy.]

Our man Lorenz says he will make more than the Company out of the contract and while I doubt that, it seems to give additional reason for believing the Co. profit of 25¢ is certain.

Yours etc., WM. G. CRAWFORD."

"JUNE 20TH.

MY DEAR CHANCE: I enclose the *last page* of the bag contract with the P. O. Dept. This page is a regular form and is sent to you so that you may have say 4 or 5 such pages typewritten, & sign with two witnesses as shown, to be returned to me Saturday so as to be here Monday morning. I have had the contract written & submitted same to the Attorney General for approval. The last page he found satisfactory there are changes most likely to be made in the other pages as there always is in these cases. The object is to have the last page signed & here Monday as I can take it up with Attorney General get the Surety Co. bond & obtain finally the signature of the P. M. Gen'l.

I wired you today to be here tomorrow Saturday morning as I think all could be closed tomorrow but send this page in case you did not get off. I wanted to settle all tomorrow if possible as even though the P. M. G. has approved the Committee's report in our favor I think it is safer to *close* matters by contract as soon as possible. Of course if you do not get here Saturday, you can get these last pages here by Monday by mail which would be as well as coming yourself then.

There will be three contracts required one for us, one for P. O. D. & one for the Auditor of the Treasury, so I ask for five of these pages to be written & signed by you as per sample so that in case of accident there will be enough.

Have them written on paper as nearly like enclosed as possible as balance of contract I have written on this paper.

Y'rs tr'y, WM. G. CRAWFORD."

242 "And for the faithful performance of this contract and each and every of its covenants, agreements and stipulations therein of their part to be performed, the said party of the second part binds themselves their heirs, executors and administrators.

In witness whereof the said Postmaster General has caused the seal of the Post Office Department to be hereunto affixed, and has attested the same by his signature.

And the said Postal Device and Lock Company, Principal, as the party of the second part to the said contract has hereunto set its hand and seal by its President on the day and year first herein written.

Signed sealed and delivered by the Postmaster General in the presence of—

POSTMASTER GENERAL.
POSTAL DEVICE & LOCK CO.,
By WADE CHANCE, *President.*

And by the other party thereto in the presence of—
(Two signatures illegible.)

"*Memo.*

JUNE 21, 1902.

MY DEAR CHANCE: I wired you Friday afternoon Arts Club, because I knew too late to catch you at office, to come to Washington so as to be here this morning. I also write to the office enclosing the same I do now, for your signature (in case you did not get to Washington) to be forwarded to reach me Monday. As I have missed you in both case- as I hear you are at Yeddo by y-r note this morning, I send enclosed for you to sign Sunday at Yeddo & send immediately to reach me Monday early. Take these papers to the Post Office in Saratoga or to the train as soon as you have signed as President of Co. & Mr. Trask and some one else has signed on lines penciled by me for witnesses. I must get this early Monday morning. As you could not be here today of course it is not necessary for you to come Monday since I can have your signature to papers by then by mail. I send last page only as the Attorney General has to look over and approve contract, which I hope he will do by Monday. I am anxious to have contract signed as soon as possible by P. M. Gen'l so that there may be no slip. When signed and sealed, all is completed.

I wired Mr. Trask to send letter to Fidelity & Deposit Co. of Maryland, Baltimore, stating Co. is responsible financially & able to fill contract, so they will issue me bond for Co. of $15,000.

Give my kindest regards & remembrances to the household of Yeddo.

Yours tr'y, WM. G. CRAWFORD."

The following pencil note appears in the margin of the above letter, "I would like Mr. Trask's name to appear as witness."

243 "JULY 12, 1902.

DEAR CHANCE: I enclose copy Bill. There are some changes to make. I wanted to bring the action here so as to give the Columbia Supply Co. as much trouble & expense as possible. The officers reside in N. Y. & the Presdt. was here for a day or two, but got away before I could take action. The bill is prepared for both N. Y. & Washington. I have sent you the former—*please return.*

Your notary advice is good as a general rule but in this particular case you were not personally concerned, it being a Postal Co. matter for which I am as careful as possible for my own sake as well as yours. I would really be more responsible than you.

Our printed orders & receipts furnished by the Dept. will soon be ready, & orders from Postmasters have been coming in so that by next week we should have some orders for bags. I may have to come on again to see some manufacturers before the orders are ready & would then return here for them before starting North to superintend manufacture and get all well under way.

Yours truly, WM. G. CRAWFORD."

"The Di Briazza Postal Device & Lock Company, Bowling Green Offices, 11 Broadway, New York.

WASHINGTON, *Oct.* 10.

"MY DEAR CHANCE: The bill and power — attorney received O. K. Enclosed I hand you two checks. I am leaving here Monday for Hartford, by which time I hope to have collected the 15,800. I will see you in N. Y. Part of the check to me is for expenses and part for salary. Kindly return Saturday so I may receive it Monday morning, as I have some things to pay here. I sent Chubb & Co. amount — their bill. In haste,

Yours truly, WM. G. CRAWFORD."

"WASHINGTON, D. C., *Oct.* 12.

MY DEAR CHANCE: Enclosed I send your letter, bills & checks for the Wm. H. Wiley & Son Co., Hartford, who do work on our satchels. Please sign check immediately and mail enclosed letter with check, to the Wiley Co. It must reach them the 14th, *the last day due.*

I expected to be in N. Y. by the 13 & to go to Hartford by the 14th, but I find I will be here day or two latter when I will come to N. Y. with check for $15,800.00 covering our bill to the Government.

Please be sure to sign and mail this check on receipt of this so it may reach Hartford by the 14th.

Yours truly, WM. G. CRAWFORD.

Will see you between 14th and 18th."

Postal Device and Lock Company, 1407 F Street, Washington, D. C.

JAN. 15TH, 1903.

Wade Chance, Esq., New York City.

MY DEAR CHANCE: Enclosed I am sending you a letter to the Wm. H. Wiley & Son Co. with check for $1519.48. Please,
244 sign same and mail it immediately as the remittance should have reached me on the 15th, but was held here, awaiting information from Hartford in explanation of bill.

I am still hoping to be able to go to Hartford Sunday with Mr. Hutchinson, but it is possible that the Government inspector will not go to Hartford until next week. I will write both you and Mr. Hutchinson, however, or wire in time, as soon as I know definitely when I can leave. I have a warrant being drawn today for $3337.02 at the Post Office Department, which I will mail you tomorrow for deposit.

I hope to receive the Fabrikoid agreements tomorrow. If you have not sent them, they can be mailed by you to reach me Saturday morning, as I will not leave in any event before Saturday afternoon, as the inspector cannot go before Monday at the earliest.

Yours very truly,

POSTAL DEVICE & LOCK COMPANY,

By WM. GORDON CRAWFORD,

Mgr. & Attorney."

EXHIBIT K.

Postal Device and Lock Company, 11 Broadway, New York.

930 F ST., WASHINGTON, D. C., *April* 19, 1902.

The Wm. H. Wiley & Son Co., Hartford, Conn.

DEAR SIRS: In accordance with your agreement of March 31, 1902, with this Company, I hereby submit certain signed specifications for mail collecting and delivering bags or pouches and shoulder straps with the request that you furnish me with bids for manufacturing same in lots of 1,000 and 2,000 of each satchel or bag marked "A," "B," "C," "D," "E," in said specifications enclosed. The bid on each satchel to include the rings (attached) to which the shoulder straps are to be fastened by snap hooks. All other straps, buckles, etc., attached to satchels as shown by specifications and as per three samples submitted, are to be included in estimate or bid for satchels.

The bid or figure for the shoulder strap for each of said bags or satchels as shown by specifications is to be quoted separately as also bid for shoulder strap (sketch) enclosed.

Kindly acknowledge receipt of specifications and let me know when samples arrive and how soon I may expect figures as above. Return one set of specifications signed by you (Rec'd April, 1902. The Wm. H. Wiley & Son Co. W. H. Wiley, Presdt.

Yours very truly,

POSTAL DEVICE AND LOCK CO.
WM. G. CRAWFORD, *V. P.*

The sketch for shoulder strap is enclosed from which to make a *sample; samples* of satchels follows:"

245 EXHIBIT L.

"The Wm. H. Wiley & Son Co., Hartford, Conn.

HARTFORD, CONN., *August* 9, 1902.

The Wm. H. Wiley & Son Co., Hartford, Conn.

GENTLEMEN: We beg to hand you herewith our order for manufacturing "A" and "B" carriers' satchels. We desire you to make up Satchels amounting to 3000 style "B" in number at the very earliest date possible, it being understood that you will make at least at the rate of 50 per day. We also desire you to make up for us to the extent of 8000 in number, of Satchel "A," and desire you to begin these as soon as possible; in other words, we wish to assure you, that you will make us according to the above, 11000 eleven thousand satchels. As to the time for the delivery of the "A" satchels, we are unable at present, to give you any definite information. These Satchels are the ones which are to be delivered from time to time as ordered by us, to the Hartford Postmaster. We are sure before the end of the month we can give you definite informa-

tion regarding the "A" Satchels, so that you will understand about what you are to make up per day or week to meet the demand.

The price agreed upon for the above Satchels, is 55 cents f. o. b. Hartford. Payments for same to be made as follows: "You will render your bill on the first of every month, for all Satchels manufactured up to the fifteenth of the preceding month, we agreeing to pay this bill before the fifteenth of the month in which it is rendered.

Please consider this your authority to proceed immediately with this work, and we will forward you form of contract for signature, guaranteed by Mr. Spencer Trask, as soon as practical.

Yours very truly,

POSTAL DEVICE & LOCK COMPANY,
By the Vice President, WM. G. CRAWFORD.

Above bags are to be made according to sample bags which are to be furnished in a day or two. Registered receipt from Hartford P. M. to be obtained by you which will be your evidence of shipment of "A" bags.

WM. G. CRAWFORD, *V. P.*

Accepted by the Wm. H. Wiley & Son Co.
WM. H. CORBIN, *Treas.*"

EXHIBIT M.

New York Leather and Paint Company.

NEW YORK, *February 18th*, 1902.

Mr. Wm. G. Crawford, c/o Metropolitan Club, Washington, D. C.

DEAR SIR: We have your favor of the 15th and note what you have to say relative to the use of the Fabrikoid in bags. Since
246 we talked with you we have moved our offices and our business has increased very largely and our product is better than it was at that time, so much so that after extending tests the United States Navy has adopted it as standard for cushions in preference to all other varieties of imitation leather. We are sending you by this mail our latest product which we feel sure will please you. It is, we think, the nearest thing to real leather that has ever been produced and will wear better than any other artificial leather made. It is practically waterproof. We can also waterproof plain canvas so that it will wear longer and stand up better than plain canvas not treated. We have no samples of canvas plainly coated to show the appearance of that material without color.

The price of the leather, sample of which we send you in addition to our sample book, will be $1.12½ per yard 54" wide and 75¢ per yard 36" wide, from which there would be a discount of 15 per cent. trade and a cash discount of 2 per cent. off ten days, net thirty.

It is hard for us to estimate the cost of waterproofing as much depends upon the quality of the goods as to how much they absorb.

We believe, however, that it would not be less than about 20 to 25¢ per square yard.

If it would be any advantage to you a representative of our company will call upon you relative to this matter.

We send you in addition to the sample above mentioned a sample book showing the various colors. We can make up any color desired where a quantity of 200 yards or more is ordered at a time.

Very truly yours,

THE NEW YORK LEATHER AND PAINT CO.
(Signed) JOHN ASPINWALL, *General Manager.*

EXHIBIT N.

The New York Leather and Paint Co.

NEW YORK, *February 28th,* 1902.

Mr. Wm. G. Crawford, c/o Metropolitan Hotel, Washington, D. C.

DEAR SIR: We have your favor of the 23rd, and before writing you we desired to take up the matter and discuss it with our representative who covers your territory, and after a conference we have concluded that it would be unwise for us at the present moment to make any exclusive contract with you, although we are perfectly willing to guarantee you the prices which we name for 60 days or 90 if you prefer. We would be willing to allow you a commission of 10 per cent. in addition to the discounts named in our favor of the 18th. We regret that we cannot give you at present a sample of the Duck coated. It is probable that about the end of next week our representative will be passing through Washington when *we* will call upon you.

We are glad to hear you say that the chair covered with Pegamoid four years ago is as good as new, and you make the supposition that Fabrikoid is as good. We desire to say that Fabrikoid is very much better than Pegamoid, and we changed the name from Pegamoid on account of the vast improvement we had made in the material. We have no material suitable for straps, although our goods can
247 be made into a strap by being doubled over and sewed with a series of stitches lengthwise, and we think under those conditions it would wear fully as well or better than leather and be more yielding to the shape of the shoulder. Being waterproof it would not become soggy with the rain as a leather strap does. When you get ready to desire bids on the manufacture of these we think there are two or three parties in New York that we think that we can get a hold of to make the bags and things of that sort, and we will look around in the meantime and find out just who they are so that when the time comes we can give you reliable information.

Very truly yours,

THE NEW YORK LEATHER AND PAINT CO.
JOHN ASPINWALL, *General Manager.*

EXHIBIT "O."

The Wm. H. Wiley & Son Company.

HARTFORD, CONN., *May* 6, 1902.

Mr. W. G. Crawford, Vice-President of the Postal Device & Lock Co., #930 F St., Washington, D. C.

DEAR SIR: In accordance with your request, we herewith hand you estimates on the different satchels and bags, which you submitted to us April 19th. You will note that we have given the figures on the frames and catches separate, as *there* are the prices furnished us by Henry & Wright, and we have not had an opportunity of getting any other estimate on these items.

If we were to furnish the bags alone, we would be obliged to add 5 per cent. on the price as given. If we were to furnish the straps alone we would be obliged to add 20 per cent. to the price as given, as the figures that we give are based on furnishing both straps and satchels together. In this way we are able to make the best use of the material.

The specifications, which you have given us, figure up very expensively in the quality of the materials that you demand and the standard of work which is required, as for instance: Satchel A in following your specifications costs considerably more than the single satchel, which we sent you figures on before.

Satchel A		1000	quantity....	$3.17	each;	2,000	quantity....	$3.07	each.
" "	Strap	"	"	27	"	"	"	24	"
" B		"	"	3.71	"	"	"	3.65	"
" "	Frame	"	"	45	"	"	"	36	"
			Total..	4.16			....	4.01	
" "	Straps	"	"	43	"	"	"	40	"
" C		"	"	2.35	"	"	"	2.27	"
" "	Frames and catches.....			.99	"	"	"	79	"
			Total..	3.34	"	"	"	3.06	
" "	Straps	"	"	37	"	"	"	33	"
" D		"	"	3.08	"	"	"	3.00	"
" "	Frames & catches.....			1.11	"	"	"	91	"
			Total..	4.19			....	3.91	"
" "	Straps	"	"	41	"	"	"	37	"
" E		"	"	4.16	"	"	"	4.06	"
" "	Straps	"	"	27	"	"	"	24	"

248 TERMS: Cash, deliveries to be made within a reasonable length of time, and the prices given are for not less than the quantities specified.

We should be pleased to go over these items with Mr. Crawford when he is in town the latter part of this week.

W. H. C. 1.

Very truly yours,

THE WM. H. WILEY & SON CO.

(Signed) WM. H. CORBIN, *Treasurer.*

EXHIBIT P.

Sworn Statement of William Gordon Crawford, Made to Postoffice Inspectors J. D. Sullivan and Rush D. Simmons, at New York, N. Y., May 27th, 1903, in Relation to the Contract of the Postal Device & Lock Company with the Government for Furnishing Carriers' Satchels.

Q. What connection, if any, have you, with the Postal Device and Lock Company?

Ans. I am employed on salary, as manager for the Company.

Q. Who are the Postal Device & Lock Company? When and where organized?

Ans. It is a stock company. I hold one or two shares given me by order of the company, to enable me to be connected with the company as director and manager. The company was incorporated under the laws of New Jersey about 1897; Wade Chance, (Spencer Trask's private secretary) is President; Thomas Plunkett is Secretary and Treasurer. Mr. Trask controls the company; it is capitalized at $300,000.

Q. What business, other than the manufacture of carriers' satchels is the company engaged in?

Ans. It deals in Government contracts; manufactures letter boxes; has about entered into a contract with the War Department to furnish furniture rolls, for medical corps—Surgeon General's Office; also experimental work.

Q. Where is the manufactory of the company located?

Ans. We have no manufactory. Work is sublet. Letter carriers' satchels which we furnish the Government, are made by the Wm. H. Wiley & Son Co., Hartford, Conn.

(Written in pencil: "have now under consideration starting a factory.")

Q. Is this the contract, and specifications, that you, or the Postal Device & Lock Company, considered when making your bid for furnishing satchels? (The contract of the Gov't with the Postal Device & Lock Co.,—specifications included, period 1902 to 1906, handed Mr. Crawford for examination.)

Ans. Yes, this is the contrac and these are the specifications.

Q. Is this the contract now in force with your company, and are the satchels being supplied according to these specifications?

Ans. Yes, this is the contract now in force, and satchels are being supplied according to the specifications. (in pencil: "but not straps")

249 Q. At the time you submitted your proposal, or before that time, did you see the sample satchels furnished by the Government, for the information of bidders? If so, where, and when?

Ans. Yes, at the Washington City Post Office, and in New York; at both places, during the month of May, 1902.

Q. Did those satchels conform to the requirements of the specifications?

Ans. I cannot say, I am not familiar with leather, and did not compare satchels with specifications. I suppose they would conform to specifications. I made inquiries with view of supplying leather satchels; prepared a bid for leather satchels, but did not submit it, when we saw the paragraph in the specifications, permitting the consideration of material other than leather.

Q. Do Wiley & Sons, who manufacture the satchels, also manufacture the shoulder straps?

Ans. Wiley & Son do not manufacture shoulder straps; this company bid on straps for us, but do not furnish them. The strap described in the specifications can be furnished for less than 25 cents, (for A and B satchels) and shoulder straps (for C satchels) can be furnished for (in pencil: "something") less than 30 cents.

Q. What shoulder strap is delivered with satchels furnished by you?

Ans. The present strap in use, with the patent buckle. Think I have heard them called the Lamb strap.

Q. What understanding or agreement was made with the Department concerning the furnishing of the Lamb strap?

Ans. No agreement, except that I was told by Mr. Machen, upon or shortly after the receipt of our first order for satchels, that the Department desired to use the Lamb strap. I then stated to Mr. Machen that we would furnish the strap required, provided it did not cost us any more money. He said,—(Machen) "We want to use the strap that the carriers want." I said,—we will furnish anything the Department requires, provided it does not cost us any more money, than material required by the contract. Mr. Machen said,—"we have got to have that strap, and the cost will be all right. Will adjust that matter before we settle with you for the year.

Q. Who pays for those straps?

Ans. I suppose the Department. They ship them to us.

Q. Have you any correspondence to show who pays for the straps?

Ans. We never had any correspondence with Mr. Machen or the Department, concerning straps.

Q. Where do you get the straps from?

Ans. We get the straps from the Department.

Q. The Lamb shoulder strap is manufactured in New York. Why do you not purchase from Lamb direct?

Ans. We do not purchase shoulder straps from Lamb because the specifications do not call for the Lamb strap.

Q. Have you ever made any contract with Mr. Lamb or Mr. Beveridge, in regard to supplying shoulder straps? Was any understanding ever had with either of them?

Ans. No, I do not know either of them. I went to Lamb's shop one day to ask about the cost of shoulder straps, after I had
250 been advised that we would be required to use them. A man whom I saw there, said they sold at 40 cents each. I did not know who he was.

Q. What are you charged for the strap?

Ans. That matter has not yet been adjusted,—it was to be adjusted at price of strap described in specifications. Have had no talk with Mr. Machen about straps since he advised me we would be

required to use Lamb strap. Have notified Mr. McGregor, on a few occasions, that we were out of straps. Had no further talk with him on the subject.

Q. Who was present when the conversation with Mr. Machen concerning the adjustment, or price to be paid, was had?

Ans. There were several people in the room. I do not know who they were. I remember that a congressman came in and interrupted our conversation. I did not know him.

Q. When were the straps to be paid for? How often? Were you to pay Lamb for the straps?

Ans. Payment for straps was a matter to be adjusted before settling for orders. Did not know when. No we were not to pay Lamb for the straps. Did not know who Lamb was until that time. (The time Mr. Machen said we would be required to use them.)

Q. How would you order the straps, from the Manufacturer or the Government?

Ans. We didn't order straps, as they were furnished by the Department to meet the orders, and were shipped from the supply division at Washington, to Hartford. On one or two occasions when we ran out of straps, we notified the supply division that we were out of straps.

Q. Why didn't you get straps from Lamb instead of from the Government? Could you not obtain them as cheap or cheaper?

Ans. Because we didn't order them at all. Mr. Machen said they wanted the Lamb strap and that the Department would furnish it. I protested against a possible difference in cost. Machen said, that was all right,—about cost. That the matter would be adjusted when we completed the orders for the year.

Q. Are you aware that the shoulder straps you now furnish do not conform to the specifications?

Ans. I am aware now, that the Lamb straps do not conform to specifications. I know this from the fact that I got bids on straps described in specifications.

Q. Did the sample satchels submitted for the information of bidders, have Lamb straps attached?

Ans. I do not know whether Lamb straps were attached or not. They had a strap, but I am unable to say whether it was the Lamb strap or not.

Q. How many satchels have you supplied the Government since your contract has been in force? What is the aggregate amount received?

Ans. We have supplied 15000 to 16000 satchels; received $25,000 to $30,000.00.

Q. Does this amount include the strap?

Ans. This includes the amount due us under the contract.

Q. Is Mr. Spencer Trask or Mr. Wade Chance aware of the conditions under which straps are furnished?

Ans. I think Wade Chance knew the conditions. I told him some time afterwards; last year, I think. I do not know whether Mr. Trask does or not.

251 Q. Do you know whether same conditions existed under former contracts?

Ans. I do not know anything about former contracts. Simply found out that the Lamb strap had been used by previous contractor. I saw them first at Mr. Stern's, Baltimore, Md. He was contractor at the time. I then supposed Stern made the strap.

Q. Is the clause in the specifications which admits of the consideration of material for satchels, other than leather, inserted at the instance of you or your company? (Clause read to Crawford.)

Ans. I had nothing to do with its insertion. Do not know anything about it.

Q. What influence was brought to bear to obtain the contract?

Ans. None that I know of.

Q. We have evidence of a draft drawn by the Postal Device & Lock Co., on Spencer Trask, for $5441.35, dated Oct. 24, 1902. For what purpose was that draft drawn?

Ans. I presume it was for supplies; for Pegamoid.

Q. Where did you purchase your pegamoid?

Ans. At Newburg, N. Y.

Q. This was drawn on a bank at Toledo, Ohio. For what purpose?

Ans. Oh, that was for shoulder straps.

Q. Who furnished shoulder straps, at Toledo, Ohio?

Ans. A man by the name of Lorenz entered into an agreement by which he was to furnish straps.

Q. But you have already stated that the straps used by you, were furnished by the Department, and are the Lamb straps.

Ans. Well, what I meant to say was, that we entered into an agreement with Mr. Lorenz, by which he was to furnish the straps, but as the government furnished the Lamb straps, we felt obligated to pay Mr. Lorenz for the straps contracted for.

Q. Do you mean to say that you paid $5441.35 to Mr. Lorenz for straps contracted for, and which were not furnished?

Ans. Well, it was this way: Mr. Lorenz came to Washington for the purpose of bidding on the satchel contract, and we had an agreement or understanding, by which we were to furnish the satchel, and he was to furnish the straps.

Q. What is Mr. Lorenz's given name?

Ans. George Lorenz.

Q. We find there was another draft, made for $686. in January, 1903. Was that for straps which were not furnished?

Ans. Well, he, (Geo. Lorenz) gets a per cent. of the net profit we receive, equal to about ⅔ of our profit; that is: if there is a profit of $25.00, for instance we would get $15.00 and Mr. Lorenz would get $10.00. That is the proportion.

Q. Is Mr. Lorenz a strap manufacturer?

Ans. He is so situated that he can manufacture straps, because he is associated with a man in Toledo who is in a position to manufacture straps, and had before made contracts with the Government.

Q. Who is this man?

Ans. I do not know; I cannot recall his name. Have heard Mr. Lorenz speak the name, but have forgotten it.

Q. What part of this money was paid to Mr. Machen?

Ans. I do not know of any money being paid Mr. Machen. This

money was paid Mr. Lorenz. I do not know what disposition he made of it.

252 Q. How did you come to make the arrangement spoken of with Mr. Lorenz?

Ans. He came to my office and introduced himself, and proposed that if I would share the profits of the contract with him, he would not submit a bid for the satchel contract, and would supply the shoulder straps on his part.

Q. Is Mr. Trask aware of this agreement or combination with Mr. Lorenz?

Ans. Yes, Mr. Trask knows that a party in Ohio receives some of the money we receive in payment for satchels."

EXHIBIT Q.

"Sworn Statement of William G. Crawford.

MAY 29, 1903.

Before J. L. Bristow, Fourth Asst. P. M. General, M. C. Fosnes, Post Office Inspector, John D. Sullivan, Post Office Inspector, Rush D. Simmons, Post Office Inspector, John R. Tullis, Stenographer.

By General BRISTOW:

I do not know how the stock of the Postal Device & Lock Company is distributed, except that I have two shares—I had nothing to do with that—I think you can get the information on that subject from Spencer Trask. As to whether the satchel contract of that Company with the Government is a very profitable contract, we do not know yet whether it is profitable or not, for the reason that we have not made all our collections, and have not made settlements with our sub-contractors, but my impression is that we will make a fair profit.

(Upon being shown his statement made the day before in New York to Inspectors Sullivan and Simmons) that is the answers to questions put to me in New York, which I answered at the time, stating that I was not stating them positively, but with a view of going over them again and making any alterations which seemed proper. I have read it very hastily, but I do not think I have read all of it. The lead pencil notations on it were made by me, but I have not fully corrected it. The contract with the Government calls for satchels with straps, according to the specifications which are a part of it. We have not furnished the straps because when we got our first order, or shortly afterwards, I called at the Department to ask some questions pertaining to the same and was referred to Mr. Machen of the First Assistant's Office. After he had given me the information I called for, as I recollect it, he said that 'by the way, you must furnish a patented strap, or the Lamb strap.' . The conversation occurred some time ago, and I don't remember his exact language, but I will give the conversation as I remember it. It immediately occurred to me that perhaps this might be a different strap, so I stated that according to my understanding with the First Assistant we would do everything possible to make this contract a success, being a new thing, and that I did not understand there was a different strap to be furnished; but, however, that we would furnish the strap if it did not cost more money."

253 There was nothing said at the time about the price of the Lamb strap, except that Machen answered me by saying that that strap had been in use for some time, and that it had been a very satisfactory strap, and that he wanted it used and that the Department would ship the straps to us, and as to the cost, that would be a matter of adjustment and would be settled before payments were made to us for the orders for the year.

As to why I did not discuss with him the price of the strap, his room was full of people, and he said that in a very positive way, and I said in a very positive way that we did not want to furnish anything that would cost us more money that we were obliged to spend under the contract, and as his Department said they would furnish us with the straps that left full protection for us and I did not push the matter further at that time. The matter of the straps was never afterwards referred to between myself and Machen. The Department furnished the straps after that time and I never had any intimation from Machen or any other officer of the Department as to what deduction was to be made for the straps; Machen said that they intended to make a deduction for the straps, but did not say what amount. I never broached the subject again, because my experience and from what I understand also, is that the Department is usually behind in paying their accounts, and I thought that we would have to wait anyhow, probably, and I certainly was not going to bring it up or precipitate the matter.

I do not remember ever having spoken to any other official about the straps, except that I may possibly have asked McGregor about it.

This draft for $5441.35 was paid to Mr. Lorenz, and it represented his interest in our contract with the Department. Our understanding with him was that he would confer with us about figures, prices of materials and assist us in every way to arrive at such a proposition as would give to each of us some profit in the contract. He was to do whatever was for the best interests of the company after we got this contract. He was in a sense both an agent and a partner. He was to get a certain figure, as I remember it. To substantiate myself I would have to refer to my figures in making up his interests in the different orders, because he had a different interest in different satchels. There were different classes of satchels, and different figures, and I could not now state accurately what those figures were. Approximately, but I don't give these figures as correct figures at all, he would get on an average of forty cents a satchel, I think; I am just guessing. At the time Lorenz was paid $5441.35 about five thousand satchels had been furnished. That payment did not close that transaction, because our transactions could not be closed until we had settled up all our bills and made all our adjustments. I construed that payment as what was due him, but did not figure just what per cent. that was on the business we had done, because I did not consider that that was a closed transaction—I knew perfectly well that the straps had been furnished by the Department, and that we would have to pay for those straps. I did not think that I remitted Lorenz more than was due him—there was only one way to arrive at figures in the matter, that was to give him this lump sum

254 per satchel, and whatever discount had to be made would be deducted from his bills when the discount was made. I con-

templated deducting the cost of straps, expenses in traveling, and things of that kind—traveling that I had done. I should say expenses would be charged up to Lorenz amounting to between $500.00 and $1,000.00, practically all of which, I think, was deducted.

I do not know whether or not I have the figures I made when I estimated just how much was to be paid him at the time the draft for $5441.35 was drawn, but I think I could find them. My things got all mixed up when I was moving. I will endeavor to find them and submit them to Inspector Sullivan, and he may examine them.

My compensation as an officer of the Company is a stipulated amount as salary. I would rather not answer as to what that salary is. It is the same salary I received from the start, and the understanding was that it was to be increased when the business justified it, but it has not been increased yet, and that is the reason I do not wish to state it. I receive no commission on sales to the Department.

It is true, as I stated yesterday, I had a written agreement with Lorenz. I have not referred to that contract, and I do not remember the details of it. The three remittances made Lorenz represented his interest in different satchels, therefore the amounts were different and the number of satchels were different, the amount of a draft which he would receive for a certain number of A class satchels would be different from the amount of a draft which he would receive for a certain number of satchels of class C.

"Q. Now, this contract you speak of specifies in detail just what per cent. Mr. Lorenz was to receive on each satchel?

A. I am going to find the contract, then I will know all about it."

"Q. Now, Mr. Crawford, you are a business man and familiar with dealing with business affairs, and it seems to me that you ought to know definitely what interest he has got in this thing. There is not one man in forty that would believe that you would transact business with him in this vague way where thousands of dollars are involved without having more knowledge than you have of what your agreement was than you here state. I am afraid you are not exactly frank with me.

A. Well, now, I think I have certainly endeavored to answer these questions. Where there are three or four different figures and matters to be deducted and matters which are not adjusted, it is very hard for me to state what our profit would be on this contract or what Mr. Lorenz's profit would be on his interest; but I think I have given a fair idea, and I think if I am given an opportunity to dig down into this thing and go over memorandums and made a search for those papers, that they will very likely bear out my statement."

The services Lorenz rendered in relation to this contract consisted of making some figures looking up some prices, &c. he was to aid us in the manufacture, in what way was not decided, because we did not know where the things could be manufactured at the lowest figures, but he told me there was a man in Toledo who had had similar contracts for the same sort of mail bags and thought at the time
255 that parts of this goods would be made in Toledo—I thought principally the shoulder strap part of it—possibly a'l.

I met Lorenz at Hartford, Connecticut, in August or September of 1902. We agreed then that the prices I had worked up were about as good as he could do, and thought it would be better to manufacture here as it would be nearer.

After paying Lorenz $5441.35, there was a profit in the contract for our company, but that does not represent his profit by a great deal—he was to pay for the straps. I should say that the straps for the bags would cost in the neighborhood of from twenty-five to thirty-five cents according to the kind of satchels. Lorenz has not made final payment on those straps per satchel which we have delivered—the matter has not been adjusted yet finally, and that is why I am not able to state.

By our understanding that with Lorenz, he was to make and furnish these straps and as I have stated, it was contemplated first by me that the whole business would be done out there, and I thought I had escaped the manufacturing proposition, of which I knew nothing. Lorenz was not supposed to pay anybody for these straps. After the adjustment was made for straps, we were supposed to deduct the cost of these straps from the account with the Government and from our account with Lorenz.

At Hartford, I told Lorenz what Machen had said to me about the straps—that we would not have to furnish the straps as the Department was going to furnish them, and that that matter would have to be adjusted. Before my talk with Machen I expected Lorenz to furnish the straps.

I have known Lorenz, I suppose in the neighborhood of a year and a half, and I met him here in Washington when he called at my office. He came alone. I do not know whether that was the first time I saw him or not. He said he was Mr. Lorenz from Toledo. He talked generally about the contract and the making of satchels, and told me of this man in Toledo who made satchels. I did not then know what was Lorenz's business in Toledo. I knew that he was a postmaster out there, and I supposed he knew something about satchels and prices of materials, and things of that kind, and then he told me about this man out there who made satchels and said he knew him very well. I think the arrangement was made with him about that time—in the early part of May, I think, which was about the time he called at my office. I do not think he was here then more than two or three days. As to whether I inquired about him of anybody, I think I got a report from Spencer Trask and Company.

"Q. Did you know that Machen and Mr. Lorenz were intimate friends? That is, at the time you made this arrangement with Lorenz?

A. Well, in coming over here about business with the Department I saw him in the office there, and knew he was from the same State.

"Q. As a matter of fact, Mr. Crawford, did you not employ Lorenz because he was on intimate terms with Machen and would be of value to you?

A. Well, I didn't know about intimate terms. Mr. Sul-
256 livan told me the other day he was related by marriage and I did not know that until he told me.

"Q. Did you not employ Mr. Lorenz in this matter because you thought he was on intimate terms with Mr. Machen and would have influence on the inside in Department affairs?

A. Well, no, I could not say I thought that, because I had no reason to think that. I knew he knew him and was from Toledo where Machen was from, because I saw him, but did not arrange with him primarily or principally because of that fact."

EXHIBIT R.

Cash—May.

		Received.	Paid.
	Forward	9995 71†	10079 37†
1892.			
May 2	Paid typewriter bill		1 07
May 3	Paid trip Baltimore on —		1 75
" 6	" " " " —		2 75
" 10	Check # 4766 S T & Co to Regester	50 00	
May 10	Paid S. W. Regester Baltimore Royalty or license on chute		50 00
May 10	P'd Express from N. Y		50
" 10	[Trip Baltimore, N. Y., Hartford as per]*		1 10
" 10	Paid for telegram		
" 10	[Statement]* Express Hartford		70
12	Express Newburgh		40
12	Check 4767 Spencer Trask & Co. W G C	100 00	
12	[P'd] *Vice Pres'd't* a/c *Expenses $100*		
12	Paid Express Newburgh		40
14	Check S T & Co. # 4768	226 75	
"	Paid F C. Jackson a/c 100 box order		226 75
"	Paid two telegrams		70
15	Paid Express to Hartford Conn		40
16	Express Washington D. C		90
16	Check 4769 S T & Co. favor Jas. K. Polk	150 00	*[150 00]
16	Paid James K. Pork a/c bills (May 24 6[00])†		150 00
20	Paid for telegrams		120 00
:0	P'd trip Baltimore, N. Y., Hartford as per statement		43 85
27	Paid Express Hartford 50 & Newburgh 45		95
27	Paid typewriting		2 50
28	Paid expenses Waring bunch (Fabrikoid)		1 25
28	Express from Hartford 75 & Dep't 40		1 15
28	Paid for telegrams		1 10
31	Check 4770 S T & Co. W G C	300 00	
31	Paid a/c salary V. P. April the 26 and also May 3-10-17-24.. 250		250 00
	a/c Expenses.... 50 E		
		10822 46†	10819 79†

Cash—June.

257			
	Forward	10826 46†	10819 79†
1902.			
June 4	Telegram New York Express Hartford 100		1 25
6	Cartage samples 50 Express 45		95
7	Paid trip to N. Y. as per statement		30 50
9	Cartage sample 25 telegram N. Y. 25		50
10	Typewriter for Committee work		1 42
June 13–18–20	Express N.Y. 45 Hartford 85 telegram N.Y. Newburgh 50		1 80
June 21	Check # 4771 S T & Co. W. G. C	300 00	
" "	Paid a/c salary V. V. May the 31st... 50 June 7-14-21-28... 200		
	Sundries 50		250 00

[In pencil on margin:] Rebate due P D & L Co. on profit.
[*Words and figures enclosed in brackets erased in copy.]
[†In pencil in copy.]

Exhibit R—Continued.

			Received.	Paid.
June	21	Typewriting a/c bid satchels		1 75
"	23	Check S T & Co. #4772	75 00	
		Paid Fidelity & Deposit Co. Md. premium bond		75 00
	23	Paid telegram to Mr. Trask Yaddo		67
	26	P'd Express New York		50
June	27	Check S T & Co. 4773 Polk	96 00	
	27	Paid Jas. K. Polk balance due on a/c of May 16		96 00
		(Rebate due P. D & L Co. on profit)†		
	27	Paid trip to Baltimore as per statement		5 25
			11293 40†	11285 41†
		11..... 293.40† 11..... 285.41†		
		Bal..... 8.05†		
		Rec'd Balance $8.05 for year ending June 30, 1902.†		
		Cash—July.		
		Cash balance on hand..... 8.05† Forward.....	8 05†	
1902.				
July	2	Paid telegram from Hartford 65 & Boston 55		1 00
	3	Paid Boston Artificial Leather Co		38
	5	Paid trip N.Y. Hartford etc. as per statement		44 90
	5	P'd express Phil. 30 & New York 30		60
	8	" " Boston 70 & Phil. 25 Hartford 60		1 55
"	9	Check S T & Co. #4774 Regester	50 00	
		Paid S. W. Regester Royalty as per receipt		50 00
	9	Check S T & Co. Insurance #4775†	9 00	
		Paid Insurance Hartford by check 4775†		9 00
	10	Paid Express Boston 35 Toledo 35 telegram Toledo 40		1 10
July	13	P'd Express Brockton Mass. 40 Express N. Y. 45		85
	16	Telegrams Boston, Brockton & Boston		1 25
	17	Express Hartford 50 both Regester returns 25		75
	17	Paid typewriting		90
255	19	Check S T & Co. #4776 W G C	300 00	
	19	P'd a/c salary V. P. July 5-12-19..... $150 [July]* a/c *expense.* *150*		150 00
	22	Check S T & Co. #4777 Chance	6 75	6 75
		Paid Freight England (boxes)		
	22	Check #4778 S T & Co. (Jackson)	274 11	
		Paid F. C. Jackson Treas'r last payment on Contract boxes in full for extras & repairs		274 11
			647 91†	543 14†
		6.75† 8.05†		
		14.80†		

[* Words and figures enclosed in brackets erased in copy.]
[† In pencil in copy.]

Exhibit R—Continued.

			Received.	Paid.
		Cash—August.		
		Forward	647 91†	543 14†
1902.				
Aug.	1	Check Spencer Trask & Co. #4779 "Wiley"	49 07	
		Paid Wm. H. Wiley & Son Co. "Samples"		49 07
	"	Check S T & Co. #4780 Stall & Dean	1 [illegible]	
	1	Paid Stall & Dean Mf'g Co. Brockton sample		1 00
	7	Paid trip N.Y. Hartford, Boston, Quincy, Brockton, Providence, & New Haven for bids as per statement July 17 to Aug. 5		112 40
	7	Check #4781 S T & Co. Munn & Co	100 00	
		Paid Munn & Co. working Post Dep & Col. Recp. Belgium & Ex Canada		100 00
	20	Check 4782 S T & Co. Henry & Wright	27 80	
		Paid Henry & Wright (bag frames & tools)		27 80
	20	Check 4783 S T & Co. Henry & Wright	25 10	
		Paid Henry & Wright a/c bag frames		25 10
	20	Check 4784 S T & Co. Munn & Co	107 50	
		Paid Munn & Co. Post Dep. & Col. Recp. Germany		
		100 Canada Reg Machine tax 7.50		107 50
	26	Check S T & Co. Cash Expense a/c†	100 00	
			1058 98†	966 61†
		Cash—September.		
		Forward	1058 98†	966 61†
1902.				
Sept.	1	Check S T & Co #4786 W G C	200 00	
		Paid a/c salary V. P. July 26 50		
		Aug. 2-9-16 150		
			.....	200 00
	1	[Paid Geo. H. Tausley for work as per his statement]*		*[51 05]
	4	Paid Neale Pub. Co. as per statement		4 80
	5	Paid Jno. McClary W W Co. for shelves for tools at office, Hartford†		2 00
	11	Paid Bill H. F. Corning & Co. repairs on satchels		1 70
250	11	Western Union Telegram		25
	15	Check 4787 S T & Co. W G C	175 00	
		Paid a/c salary V. P. Aug. 23-30 .... $100		100 00
		Expense 75		
	"	Paid trip Hartford to Superintend Mfg. & to Worcester for bids as per statement		173 50
	18	Paid for Company factory signs Preston & Kenyon		2 25
	20	Check S T & Co. #4788 Pratt & Whitney	74 28	
		Paid Pratt & Whitney to Sept. 1st & storage to July 1st /02		74 28
	23	Check S T & Co 4789 "Tausley"	73 85	
		Paid Tausley Sept. 1st 51.05 Paid as above		51 05
	23	Paid Tenn Sadler Machine Co. as per bill		22 80
	23	Check #4790 S T & Co	9 00	
		P'd bills The Schwerdtle Stamp Co. dies		9 00
			1591 11†	1608 24†

[* Words and figures enclosed in brackets erased in copy.]
[† In pencil in copy.]

Exhibit R—Continued.

		Received.	Paid.
	Cash—October.		
	Forward	1591 11†	1608 24†
1902.			
Oct. 1st.	Check S. T. & Co. #4791 W G C	150 00	
	Paid a/c salary V. P. Sept. 6 & 13—100. Expense... 50		100 00
Oct. 4	Paid expenses trip Hartford N. Y. Washington as per statement		83 85
" 10	Check #4792 S T & Co. Trust Co	50 00	
	Paid Corporation Trust Co. Annual Reg. fee		50 00
13	Paid trip Baltimore & Philadelphia as per Statement		14 40
13	Check S. T. & Co. #4793 W G C	175 00	
	Paid a/c salary V. P. Sept 20-27- & Oct 4th.. Sundries.... 25.00		150 00
21	[Paid trip Phil. N. Y. & Hartford to inspect factory as per statement]*		*[49 95]
	Check 4794		
13	[Check 4794]* S T & Co. Paid to Mr. Brott, Att'y	20 00	
	Paid to Mr. Brott Wiley agreement	1986 11†	20 00
[22]*	[Paid Chubb & Sons repairs London, Eng.]*		*[1 50]
[25]*	[Paid]*		
13	Check S T & Co. 4795 Wiley	1231 62	
	Paid Wm. H. Wiley & Son Co		1231 62
15	Check S T & Co. 4796 Wade Chance	4 00	
	Paid Wade Chance Expense box London		4 00
18	Check S T & Co. 4797 Fabrikoid	3718 70	
	Paid Fabrikoid Co. on a/c statement		3718 70
21	Check S T & Co 4798 (due† Lorenz 5950 00) √†	5441 35	
	Paid Lorenz Less Expenses trips May 10-17 to Oct 15 $508.65†		5441 35
21	P'd trip Phil. N.Y. Hartford as per statement		49 95
22	P'd Chubb & Sons or Saunders & Co. London repairs		1 50
25	P'd Express		25
27	Check 4799 S T & Co. Ed. W. Clark	142 50	
	Paid Ed. W. Clark repairs		142 50
27	P'd Check S T & Co. #4800 Sect'y State N. J.	1 00	[10]*
260	Paid fee for filing annual report		1 00
31	Check S T & Co. #4801 Newmann	201 60	
	Paid Newmann Hardin Co. Newark	12726 88†	201 60
		12726 88†	12818 96†

[In pencil on margin:] Paid W. G. C. 25 % Rebate due P D & S Co by C C Co ½ Com 10 %

	Cash—November.		
	Forward	12726 88†	12818 96†
1902.			
Nov. 1st	Express Hartford		1 25
11	Express 30 Express N. Y. 1.30		1 60
" 12	Check S T & Co. #4802 Wiley	1729 24	
	Paid a/c Wm. H. Wiley & Son Co		1729 24

[* Words and figures enclosed in brackets erased in copy.]
[† In pencil in copy.]

Exhibit R—Continued.

		Received.	Paid.
12	Check S T & Co. #4803 W G C	200 00	
	Paid W G C a/c Salary V. P. Oct 11-18-25-Nov. 1st†		200 00
15	Paid trip Hartford to inspect Manufacture as per statement		34 50
25	Paid trip Hartford with Government Inspector, as per statement		49 40
26	Crate desk & freight Hartford		5 90
26	Telegrams		80
27	Typewriter		1 00
28 & 29	Telegrams		2 15
	Cash—December.	14656 12†	14844 80†
	Forward	14656 12†	14844 80†
1902. Dec. 1	Telegrams & answers		2 15
" 2	Check S T & Co. #4804 Ed. W. Clark	177 45	
	Paid Ed. W. Clark Chag. frames		177 45
2	Paid telegrams		80
11	Check D T & Co. #4805 Wiley & Co	1404 84	
	Paid Wm. H. Wiley & Son Co. to Nov. 15		1404 84
11	Check S T & Co #4806 Edw. W. Clark	34 00	
	Paid Ed. W. Clark repairs by Check #4806		34 00
13	Check S T & Co. #4807 Fabrikoid Co	1472 40	
	Paid Fabrikoid Co. on a/c material		1472 40
22	Check S T & Co. #4808 W G C	200 00	
	Paid V. P. a/c salary Nov. 8-15-22-29		200 00
22	Check S T & Co. #4809	992 90	
	Due L. 1126.75†		
	Less Expenses 133.85†		
	992.90†		
	Paid Geo. E. Lorenz trips 10/15 to 11/23†		992 90
22	Check S T & Co. #4810 Polk	100 65	
	Paid Jas. K. Polk balance due to date		100 65
	Rebate due. P. D. Co on profit†		
	19,229.99 P'd.†	19038 36†	19229 99†
	19,038.36 Rec'd.†		
	Due... 191.63†		

[In pencil on margin:] Paid W G C 25 % Rebate due P D & L Co ½ Com 10 % from C C Co.

[* Words and figures enclosed in brackets erased in copy.]

[† In pencil in copy.]

261 EXHIBIT S.

1208 18TH ST., WASHINGTON, D. C., *May* 30, 1902.

Celluloid Co., 30-36 Washington Place, New York.

DEAR SIRS: You have an imitation leather which is used somewhat by The Wisconsin Chair Co. of Wis.

I expect to go into the manufacturing of an article & may use imitation leather. Please send me prices of your various grades and samples. Also send me about ½ yard of your *best* grade. Let me know cost & I will remit.

Yours truly, WM. G. CRAWFORD.

Send bill with sample.

The Celluloid Company, 30, 32, 34, 36 Washington Place.

Factories: Newark, N. J.

Trade "Celluloid" Mark.

NEW YORK, *June 3rd*, 1902.

Mr. Wm. G. Crawford, 1208 18th St., Washington, D. C.

DEAR SIR: Replying to your favor of May 30th, we enclose you herewith a sample-book of "Texoderm" in weight "E," and would call your attention to the description of same on the fly-leaf of sample-book. Would ask you to note that the goods are put up in rolls of about 50 yds., 50" wide. We quote you 75¢ per yd. for all colors shown except color 204, which is 85¢ per yd. Terms, net 30 or 2%—10 days. Should you favor us with an order, we would ask you to kindly forward New York references.

Yours very truly,

THE CELLULOID COMPANY.
W. S. SILLCOCKS, JR.

1208 18TH ST., WASHINGTON, D. C., *May 30th*.

Keratol Co., Newark, N. J.

DEAR SIRS: You have an imitation leather which is used somewhat by Hy Likly & Co. of Rochester, N. Y.

I expect to go into the manufacturing of an article & may use imitation leather. Please send me prices of your various grades and samples. Also send about ½ yard of your *best* grade. Let me know cost & I will remit.

Yours truly, WM. G. CRAWFORD.

Send bill with Sample.

262 The Keratol Company, Cor. South & Van Buren Sts.

Trade Mark, Keratol, Registered.

NEWARK, N. Y., *June* 2, 1902.

Wm. G. Crawford, 1208 18th St., Washington, D. C.

DEAR SIR: Acknowledging your favor of the 30th ult., we make a great many lines of goods and do not know what weight or quality you are interested in. We enclose sample book of our famous C quality Keratol, which is the best line we make in Muslin weight. This grade comes 34″ wide and costs Black 40¢, colors 45¢ and White 50¢ per yard net, f. o. b. Newark, N. J.

We also enclose sample book of our M quality Moleskin, which comes 36″ wide costing Black 75 cts. and Colors 80 cts. per yard.

Any color in either book can be had in any pattern in that book.

Kindly let us know what grade you want and oblige.

Yours truly, THE KERATOL CO.

Dic. P. R. B.

1208 18TH ST., WASHINGTON, D. C., *May 30th*, 1902.

Mess. A. W. Pope & Co., Boston, Mass.

DEAR SIRS: You have an imitation leather which is leather on both sides, that I have seen in use in Maine.

I expect to go into the Manufacturing of an article and may use imitation leather.

Please send me samples & prices of your various grades.

Also send me ½ yard of your *best* grade leather on *both* sides, and ½ yard of your leather on one side *best* grade, if you have such an article.

Let me know cost & I will remit—Send bill with samples.

Y'rs *t'yl* WM. G. CRAWFORD.

Arthur W. Pope & Co., Shoe Goods & Leather, 118 Lincoln St.

BOSTON, *June* 5, 1902.

Mr. Wm. G. Crawford, Washington, D. C.

DEAR SIR: Your letter at hand and in reply we enclose you samples of some of our imitation leathers. These goods are absolutely water-proof and will give much better wear than the regular leather in out-door work as well as inside. We *We* quote you on the light weight goods, 40 cents per yard 36″ wide and on the heavy weight goods, in either of the grains enclosed at 85 cents yer yd. 36″ wide. In your letter you ask us to send you ½ yard of an imitation leather coated on both sides. We do not make this grade and in regard to the best grade of which you ask ½ yard, the best grades are the heavy weights and we do not know the color you want nor the grain and we thought it would be better to write you and send you samples so you can let us know.

Yours respectfully, A. W. POPE & CO.

Dictated WW

263 EXHIBIT 124.

Postal Device & Lock Company, Bowling Green Offices, 11 Broadway, New York.

JAN. 17TH, 1903.

Hon. George E. Lorenz, 1903 Madison Street, Toledo, Ohio.

DEAR SIR: Enclosed please find check for $686.46 due you for your interest in the last lot of satchels "A," as per account enclosed, which please receipt and return to the above Company at Washington. There are no expenses chargeable against you, by us, for this lot of satchels. Enclosed please find statements for your signature for the last remittances made you.

The last straps sent to our works at Hartford, while accepted by the Government and shipped, seemed to be lighter in color and weight than previous lots. Will you please have this matter brought to the attention of the manufacture-s, and notify our Washington office when you forward the receipts enclosed herewith for your signature.

Yours very truly,

POSTAL DEVICE & LOCK COMPANY.
WADE CHANCE, *President.*

Said letter except the signature "Wade Chance" was in typewriting.

68*a*.

Wade Chance, President, New York City.

Thos. Plunkett, Sec'y and Treas., New York City.

Wm. Gordon Crawford, Mgr. and Attorney, Washington, D. C.

Government Contractors.

Postal Device and Lock Co., Manufacturers United States Government Supplies.

Address Branch Office: 1407 F Street, Washington, D. C.

Executive Offices: 11 Broadway, New York.

Works: Hartford, Conn.

Patentees and Manufacturers Keyless Street Letter Box.

JAN. 15TH, 1903.

Wade Chance, Esq., New York City.

MY DEAR CHANCE: Enclosed I am sending you a letter to the Wm. H. Wiley & Son Co. with check for $1519.48. Please sign same and mail immediately as the remittance should have reached them on the

15th, but was held here, awaiting information from Hartford in explanation of bill.

I am still hoping to be able to go to Hartford Sunday with
264 Mr. Hutchinson, but it is possible that the Government inspector will not go to Hartford until next week. I will write both you and Mr. Hutchinson, however, or wire in time, as soon as I know definitely when I can leave. I have a warrant being drawn to-day for $3337.02 at the Post Office Department, which I will mail you tomorrow for deposit.

I hope to receive the Fabrikoid agreements to-morrow. If you have not seen them, they can be mailed by you to reach me Saturday morning, as I will not leave in any event before Saturday afternoon, as the inspector cannot go before Monday at the earliest.

Yours very truly,

POSTAL DEVICE & LOCK CO.,
By WM. GORDON CRAWFORD,
Mgr. & Attorney.

(*Slip Attached to Exhibit No.* 125.)

Please send New York Exchange.

125.

Wade Chance, President, New York City.

Thos. Plunkett, Sec'y and Treas., New York City.

Wm. Gordon Crawford, Mgr. and Attorney, Washington, D. C.

Government Contractors.

Postal Device and Lock Co., Manufacturers United States Government Supplies.

Address Branch Office: 1407 F Street, Washington, D. C.

Executive Offices: 11 Broadway, New York.

Works: Hartford, Conn.

Patentees and Manufacturers Keyless Street Letter Box.

JAN. 20TH, 1903.

Geo. E. Lorenz, Toledo, Ohio.

DEAR SIR: Enclosed I send you letter from the president of this Co. which encloses your check for last Government payment. My attention was called to the complaint from the factory regarding straps and I was asked to note same, sign check, and forward you the letter from our president.

You will please note that the receipts enclosed you are to receive your signature and to be returned to the above Co.

Yours very truly,

POSTAL DEVICE & LOCK CO.,
By WM. GORDON CRAWFORD,
Mgr. & Attorney.

265 *Memorandum.*

May 7th, 1906—Time to file transcript of record in Court of Appeals further extended to June 11th, 1906.

Designation to Clerk for Preparation of Transcript.

Filed May 25, 1906.

In the Supreme Court of the District of Columbia.

No. 23866, Crim. Doc. 23.

THE UNITED STATES
vs.
WILLIAM G. CRAWFORD.

No. 23865, Crim. Doc. 23.

THE UNITED STATES
vs.
AUGUST W. MACHEN ET AL.

No. 24688, Crim. Doc. 24.

THE UNITED STATES
vs.
AUGUST W. MACHEN ET AL.

The appellant, William G. Crawford, hereby designates the following portions of the record which he desires to be included in the transcript on the appeal granted herein on the 30th day of December, 1905, as sufficient for the determination of the questions arising on said appeal.

No. 23866.

1903.
July 31st Indictment.
1905.
Nov. 27th Order consolidating case with Nos. 23,865 and 24,688.
Nov. 28th Defendant arraigned—plea "not guilty."
Dec. 19th Verdict of Guilty under 2nd, 3rd and 4th counts and not guilty under 1st count.
Dec. 23rd Motion in arrest of judgment.
Dec. 30th Motion in arrest of judgment granted.

No. 23865.

1903.
July 31st Indictment.
1905.
Nov. 27th Order granting Crawford severance.
Nov. 27th Order consolidating case with Nos. 23,866 and 24,688.
Nov. 28th Defendant Crawford arraigned—plea "not guilty."
Dec. 19th Verdict—not guilty.

266

24688.

1905.
Apl. 3rd Indictment.
Apl. 29th Demurrer to indictment by defendant Crawford.
May 12th Demurrer to indictment sustained as to counts No. 2, 3 and 4, and as to counts 1, 5 and 6 overruled.
" 18th Motion for severance filed.
" 20th Affidavit in support of motion.
" 20th Affidavit of Asst. U. S. Att'y on motion for a severance, and motion for severance as to defendant Crawford granted.
" 23rd Machen arraigned—plea guilty.
Apl. 23rd Machen sentenced to imprisonment with labor in the Penitentiary for the period of two (2) years to take effect from and inducing date of expiration of sentence in case No. 23,810.
" 23rd Machen remanded to custody of Warden of West Virginia Penitentiary at Moundsville, West Virginia.
" 23rd Crawford arraigned—plea not guilty.
June 22nd Jury disagrees and is discharged.
Nov. 27th Order consolidating case with Nos. 23,865 and 23,866.
Dec. 19th Verdict guilty 1st count. Not guilty 5th and 6th counts.
" 30th Sentenced two years in penitentiary.
" " Appeal to Court of Appeals noted.
" " U. S. Att'y waives citation.
" " Order prolonging term 38 days to settle bill of exceptions.
1906.
Jan. 5th Appeal bond $50.00 filed.
" 31st Bill of exceptions submitted to the Court.
1906.
Feb 10th Time extended to April 6th, 1906.
Mch 26th Time extended to May 7th, 1906.
May 1st Bill of exceptions made part of record.
" 7th Time to file transcript extended to June 11th, 1906.

A. S. WORTHINGTON,
Attorney for Defendant, William G. Crawford.

Service of copy of foregoing designation acknowledged this 25th day of May, A. D., 1906.

D. W. BAKER,
J. C. A.
Attorney for the United States.

Memorandum.

June 7th, 1906.—Time further extended in which to file Transcript of Record in the Court of Appeals.

267 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 509, inclusive, to be a true and correct transcript of the record, as per directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 23,866 Criminal, The United States, *vs.* William G. Crawford; No. 23,865 Criminal, The United States, *vs.* August W. Machen, *et al.*, and No. 24,688 Criminal, The United States, *vs.* August W. Machen, *et al.*, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribed my name and affix the seal of said Court, at the city of Washington in said District, this 12" day of June, A. D. 1906.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1687. William Gordon Crawford, appellant, *vs.* The United States of America. Court of Appeals, District of Columbia. Filed Jun- 15, 1906. Henry W. Hodges, clerk.

268 WEDNESDAY, *December 5th, A. D.* 1906.

No. 1687.

WILLIAM GORION CRAWFORD, Appellant,
vs.
THE UNITED STATES OF AMERICA.

On motion additional time is allowed in the argument of this cause.

The argument in the above entitled cause was commenced by Mr. A. S. Worthington, attorney for the appellant, and was continued by Mr. Holmes Conrad, attorney for the appellee.

THURSDAY, *December 6th, A. D.* 1906.

No. 1687.

WILLIAM GORDON CRAWFORD, Appellant,
vs.
THE UNITED STATES OF AMERICA.

The argument in the above entitled cause was continued by Mr. Holmes Conrad, attorney for the appellee. On motion the appellee is allowed to file additional brief herein if so advised.

On motion, the argument in the above entitled cause is suspended until further order.

THURSDAY, *December 13th, A. D.* 1906.

No. 1687.

WILLIAM GORDON CRAWFORD, Appellant,
vs.
THE UNITED STATES OF AMERICA.

It is ordered by the Court that the conclusion of the hearing in the above entitled cause is assigned for December 14, 1906.

269 FRIDAY, *December 14th, A. D.* 1906.

No. 1687.

WILLIAM GORDON CRAWFORD, Appellant,
vs.
THE UNITED STATES OF AMERICA.

The argument in the above entitled cause was continued by Mr. D. W. Baker, attorney for the appellee, and was concluded by Mr. A. S. Worthington, attorney for the appellant.

270 In the Court of Appeals of the District of Columbia.

No. 1687.

WILLIAM G. CRAWFORD, Appellant,
vs.
UNITED STATES OF AMERICA.

(*Opinion.*)

(Mr. Justice GOULD delivered the opinion of the Court:)

The appellant, William G. Crawford, was convicted in the Supreme Court of the District of Columbia on the first count of indictment numbered 24,688, charging him, August W. Machen and

George E. Lorenz with a conspiracy to defraud the United States, said indictment having been framed under Section 5440 R. S. U. S. A motion for a new trial having been overruled, appellant was sentenced to the penitentiary for a term of two years. From this he has regularly prosecuted his appeal. The aforesaid first count of the indictment under which appellant was convicted charges, in substance, that on or before the first day of April, 1902, and thereafter, there were in use in the postal service of the United States certain satchels used by letter carriers which were purchased from time to time by the United States through proper officers of the Post Office
271 Department; that the purchase of such supplies was assigned to the office of the First Assistant Postmaster-General, and that in the subdivision of the business of that office there was a division of free delivery, at the head of which was August W. Machen; that it was the duty of Machen, under the First Assistant Postmaster-General, to prepare specifications, giving a description of such supplies as were desired to be purchased by said Department, for the purpose of receiving bids and proposals for the furnishing of the same. The indictment proceeds to set out in detail the duty and custom of Machen as the general superintendent of said free delivery system in reference to the purchase of such supplies from those who made bids to supply the same. It states that at the times aforesaid one William G. Crawford was an officer, agent, and attorney for the Postal Device and Lock Company, an incorporation under the laws of the State of New Jersey, engaged in the business of selling and furnishing to the Post Office Department divers articles used in the said postal service; that during the period aforesaid and on the 6th day of May, 1902, the First Assistant Postmaster-General, acting under the advice of the said Machen, advertised for bids for letter carriers' satchels to be used during the period of four years, beginning on July 1st, 1902; that on the 3rd day of
272 June, 1902, before the awarding by the Post Office Department of any contract for the furnishing of said satchels for said period, the said Machen, said Crawford, and one George E. Lorenz, conspired to defraud the United States by means of the following dishonest scheme, namely, that said Crawford should procure the Postal Device and Lock Company to offer to the said Post Office Department a bid for furnishing so many of the said satchels as might be needed by the said Department during said period of four years from the 1st day of July, 1902, and that the said Crawford should at the same time induce the said Postal Device and Lock Company before offering said bid to enter into a contract with the said George E. Lorenz by the terms of which it should be agreed in the event that the said bid of the said Postal Device and Lock Company should be accepted by the Post Office Department, and said contract to furnish said satchels should be awarded to the said Postal Device and Lock Company, that whenever and so often as the said Postal Device and Lock Company should under such contract sell and furnish any number of such satchels and receive from the said Department payment for the same, the said Postal Device and Lock Company should allow and pay over to the said George E. Lorenz all

and so much of such payment as should remain after the said Postal Device and Lock Company should pay for the cost of manu-
273 facturing and delivering of such satchels to be sold and furnished and should have retained for itself out of such payment an additional sum equal to twenty-five cents for each of the satchels so sold and furnished. The indictment then alleges that it was further agreed by and between the said Crawford, Machen, and Lorenz, as a part of said dishonest scheme for defrauding the United States, that all the moneys which, in accordance with and by virtue of the said contract between the said Postal Device and Lock Company and the said George E. Lorenz, were to be from time to time paid by said Company to said Lorenz out of all payments made to said Company by the said United States for such satchels, should be divided between them, the said Crawford, the said Machen, and the said Lorenz, in certain proportions, and upon some certain basis and principle of division, to the grand jurors unknown, and upon a plan and by a method whereby the share of the said moneys thus to be allotted and paid to the said Machen in accordance with the said unlawful conspiracy should be transmitted to him, the said Machen, by and through the agency of said Crawford and said Lorenz, and that the said Machen should from time to time, whenever such payments should be made by the Department on account of any of the said satchels so to be sold and furnished by the said Postal
274 Device and Lock Company, receive and accept from and through said Crawford and said Lorenz a certain share of all such payments, the proportion of such share being to the grand jurors unknown, the said Machen being, as aforesaid, an officer of the United States, and the general superintendent of the free delivery system, and charged with and performing as such officer and as such general superintendent the several duties hereinbefore stated and set forth, and said Crawford and Lorenz well knowing that said Machen was such officer, etc. The indictment further states that thereafter, on the 25th of June, one thousand nine hundred and two, a contract was entered into by the United States with said Postal Device and Lock Company by the terms of which the United States agreed to purchase from the said Company at certain prices fixed and stated in the said contract so many of the said satchels as might and should be needed by the said Department in the said postal service during the period of four years, to begin July 1st, 1902, and that thereafter, and in pursuance of said conspiracy, said Crawford presented in the name of said Postal Device and Lock Company a certain bill against the said United States for the sum of $15,800 for five thousand of the said satchels sold under said contract; that thereafter, on the 13th day of October, one thousand nine hundred and
275 two, in further pursuance of said unlawful conspiracy, Machen, as general superintendent of the free delivery system, wrote upon said bill or account the words, "Approved, A. W. Machen, General Superintendent of the Free Delivery System;" and that thereafter Crawford wrote a check of the said Postal Device and Lock Company, dated October 21st, 1902, upon Spencer Trask and Company, bankers of New York City, for the payment of the sum of

$5,441.35 to the order of said George E. Lorenz and sent the same to the latter, and that thereupon, on October 28th, 1902, Lorenz in further pursuance of said unlawful conspiracy transmitted the sum of $900 to the said Machen.

The evidence recited in the bill of exceptions tended to establish the following facts: That, as averred in the indictment, from April 1st, 1902, to the date of the filing of the indictment the Government used many letter carriers' satchels in carrying on the business of the Post Office Department which were purchased through the office of the First Assistant Postmaster General, in which office was the Division of Free Delivery, which, from May 6th, 1893, to May 27th, 1903, was managed and controlled by August W. Machen; that in that Division were prepared the specifications for such satchels which were inserted in the advertisements for bids for furnishing the same.

The evidence details the part which, under the regulations
276 and customs of the Department, the Superintendent of the Free Delivery Division took in respect of the contract for said satchels made in pursuance of the bids, and of the subsequent performance of such contract. It is then shown that, in pursuance of a bid made in response to an advertisement dated May 3rd, 1902, a contract was entered into between the Postal Device and Lock Company and the United States, dated June 25th, 1902, by which said Company was to furnish carriers' satchels of classes A and B, and collectors' satchels of class C for four years, beginning July 1, 1902, and was to be paid therefor $2.19 for each satchel of class A, $3.16 for each satchel of class B, and $3.15 for each satchel of class C. That on June 3rd, 1902, a contract was entered into between the Postal Device and Lock Company and George E. Lorenz whereby the latter agreed to give his best services in securing a contract for said Company for the manufacture of satchels for the Government; that said Company, acting through the defendant, Crawford, and said Lorenz, should jointly determine on bids; that said Company should receive a profit of 25 cents on each satchel, while all the remaining profit should go to Lorenz for his services; subsequently, and after the contract between said Company and the United States had been signed, another agreement was entered into between
277 the Company and Lorenz fixing the amount to be paid the latter at 45 cents for each satchel of class A, $1.19 for each satchel of class B and $0.84 cents for each satchel of class C. It was next shown that the defendant, Crawford, had authority, by virtue of a power of attorney from said Postal Device and Lock Company, to represent the latter before the Post Office Department in matters pertaining to the contract of June 25th, 1902, and to receive all warrants in payment for satchels furnished thereunder. There was then shown the payment by the Government to the Postal Device and Lock Company of the following sums for satchels furnished under said contract: October 18th, 1902, $15,800; December 20th, 1902, $5,481.57; January 25th, 1903, $3,337.02; and March 17, 1903, $2,374.74. That the Postal Device and Lock Company paid to Lorenz by check as follows: October 21st, 1902, $5,441.35; December 22d, 1902, $992.90; and January 17th, 1903, $686.46.

That Lorenz sent to defendant Crawford by bank draft payable to bearer, dated October 24th, 1902, $1,435.34, which Crawford drew in cash; that on December 24th, 1902, Lorenz sent to Crawford by express $250.00, and that on January 22, 1903, he sent him a draft for $171.62. That Lorenz made the following payments to Machen: October 27th, 1902, $900; October 25th, 1902, $500; November 4th, 1902, $488.01; December 26th, 1903, $372.34; January
278 22d, 1903, $257.42. Thereupon George E. Lorenz testified that at the time he entered into the contract with the Postal Device and Lock Company he had an agreement with Machen and the defendant Crawford for a division of the compensation which he was to receive thereunder, as follows: That he, witness, should have one-fourth of the profit, the defendant Crawford one-fourth, and Machen one-half; but that he and Machen had an agreement by which what Machen and he got—three-fourths—should be divided equally between them. He further testified that he made distribution of the various sums received by him in accordance with that agreement.

Defendant Crawford, testifying in his own behalf, denied any knowledge of any agreement between Lorenz and Machen, or that Lorenz was paying to Machen any part of the money received by him under the contract with the Postal Device & Lock Company. He explained the receipt of the different sums paid by Lorenz to him, Crawford, by the statement that Lorenz employed him to represent him in Washington and to see that he got his payments under the contract promptly, and that for these services he received the sums heretofore mentioned.

The first, second and third assignments of error assail the validity of the first count of indictment numbered 24688, the first
279 assignment raising the point by demurrer, and the second and third by exceptions to the granting of the Government's first prayer and to the refusal of the trial court to grant the defendant's motion to instruct the jury to acquit on this count.

The indictment was drawn under Section R. S. U. S. 5440, which reads as follows:

"If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, all the parties to such conspiracy shall be liable to a penalty of not less than one thousand dollars and not more than ten thousand dollars, and to imprisonment not more than two years."

The contention of defendant is two-fold: First, that an agreement is not to be held a conspiracy under this section "simply because the agreement, if carried out, might be an injury to the Government"; and, second, that if such be held to be the proper construction of this section, it is void for uncertainty, under the decision of this Court in Czarra *vs.* Board of Medical Supervisors, 25 App. D. C. 443.

It may be taken as settled law that under this section the word "defraud" does not refer solely to property and pecuniary interests.

This question has been so recently fully argued before, and so carefully considered by, the Supreme Court, this Court and other federal courts that nothing more than a reference to the following
280 cases is necessary: Hyde *v.* Hine, 199 U. S. 62; Palmer *vs.* Colladay, 18 App. D. C. 426; Tyner *vs.* United States, 23 App. D. C. 362; U. S. *vs.* Bunting, 82 Fed. 883; U. S. *vs.* Curley, 122 Fed. 738; (affirmed by Circuit Court of Appeals in 130 Fed. 10.)

These authorities fully sustain the construction of this section which holds that any agreement, the object of which is to deprive the Government of the services of those who are entrusted with the discharge of duties which are essential to its proper administration, is a conspiracy to defraud. "No man can serve two masters; for either he will hate the one, and love the other; or else he will hold to one and despise the other." And when an officer of a department of the Government, charged with a public trust in connection with contracts made by third parties to furnish supplies to that department, and with the duty of giving the Government the full measure of his unbiased judgment, enters into an agreement with such contracting third party by which he is to receive a part of the proceeds of that contract, he puts himself in such a position that it is impossible for him to perform his trust or fulfil his duty to the Government; and the Government is defrauded of his services.

281 Nor does the case of Czarra *vs.* Board of Medical Supervisors of the District of Columbia, *supra*, give support to the argument that such a construction of Section 5440 makes the latter void for uncertainty. In that case this Court held that the words "unprofessional or dishonorable conduct," for which the statute authorized the revocation of a physician's license, made a part of the statute void because of their uncertainty, the reason being that such words were not defined by the law, and had no common or generally accepted definition. But in Section 5440, the offense, so far as this case is concerned, is a "conspiracy to defraud." The word "conspiracy" has an universally accepted definition in the law, which is definite and certain; and while the courts give more flexibility to the definition of fraud, the elements which constitute it are clearly set forth in a multitude of decided cases. Both are terms of the law. As said by this Court in the Czarra case, the certainty required in the definition of an offense "may be accomplished by the use of words or terms of settled meaning, or which indicate offenses well known to and defined by the common law." There can be no doubt but that this has been accomplished in the Section of the statutes under consideration by the use of the terms "conspiracy" and "defraud."

282 The fourth assignment of error relates to the qualifications of John C. Haley, who was one of the jurors who sat in the case. The record shows that when questioned under oath as to his competency Haley said he was a druggist; that he did not know the defendant; that he had formed no opinion about the case. He further testified that his drug-store was a sub-postal station, and that he was the clerk in charge; that he was technically a clerk of the City Post Office and that he received an annual compensation, which includes all clerk hire and rental, of $300. per annum. Thereupon

counsel for the defendant challenged said Haley for cause, the objection being that he was "a salaried officer of the Government." The challenge was overruled.

This assignment is sought to be sustained upon two grounds: First, that the juror was disqualified under the Code; and, second, that his relation to the Government was such as to disqualify him from sitting in a case where the United States was prosecuting a defendant for a conspiracy to defraud.

First: The qualification- of jurors are fixed, as far as the statute law in this jurisdiction is concerned, by Section 215 of the Code, which reads as follows:

"Qualifications.—No person shall be competent to act as a
283 juror unless he be a citizen of the United States, a resident of the District of Columbia, over twenty-one and under sixty-five years of age, able to read and write and to understand the English language, and a good and lawful man, who has never been convicted of a felony or a misdemeanor involving moral turpitude."

Section 217 of the Code reads as follows:

"All executive and judicial officers, salaried officers of the Government of the United States and of the District of Columbia, and those connected with the police or fire departments, counselors and attorneys at law in actual practice, ministers of the gospel and clergymen of every denomination, practicing physicians and surgeons, keepers of hospitals, asylums, almshouses, or other charitable institutions created by or under the laws relating to the District, captains and masters and other persons employed on vessels navigating the waters of the District shall be exempt from jury duty, and their names shall not be placed on the jury list."

Reading these sections together, it seems clear that Section 215 alone determines those who are qualified to act as jurors in this District; that those who are qualified under that section are not disqualified by Section 217, but, if they come within the terms of the latter section, have simply the right to assert their exemption from jury duty. The words at the end of Section 217, "and their names shall not be placed on the jury list," is merely a direction to the jury commissioners, in order that the lists may not be filled with the names of those who, when produced in Court, can escape service by asserting their exemptions. This view of the statute is supported by
the decision in the case of United States *vs.* Lee, 4 Mackey,
284 496, where, in construing a similar statute, the court said:

"The jury law exempts from service on juries parties who are engaged in public office, whether on the part of the Government or on the part of the District of Columbia. It exempts other classes of persons also from jury duty, but the persons exempted are not disqualified as jurors. It is simply the privilege of the party to become exempt from jury service on account of other engagements. But he has the capacity, the faculty to be a juror. It is his own personal privilege, and he alone is the party who shall take advantage of it. If he pleases to waive that privilege he is still a competent juror, and he has all the functions and powers which the law imputes to a man as necessary to constitute one of the twelve triers of an accused."

See also United States *vs.* Barber, 21 D. C. 456.

The precise question here involved was decided in accordance with the foregoing view in the following cases: State *vs.* Day, 79 Maine, 126; Mimro *vs.* Brigham, *et al.* 19 Pick. 368; State *vs.* Forshner, 43 N. H., 90.

Second: It does not appear that the objection to Haley as a juror on account of any bias he might entertain by reason of his employment was specifically presented to the learned trial judge. On the contrary, the record states that the defendant challenged him because he was "a salaried officer of the United States," using the language of Section 217; while in the case of Robert L. Williams, who was called as a juror and who stated that he was a cabinet maker, whose employer did work for the Government, the objection was based "on the ground that his subsistence depended practi-
285 cally in part upon the Government"; and in the case of the juror Edgar L. Barclay, who was occasionally employed by the Government to exterminate rats in its various buildings, the objection was based on the ground that "his relations with — Government made him an incompetent juror in the case." It is thus apparent that in the case of the juror Haley the only question the court was asked to determine was whether he was disqualified as being "a salaried officer of the Government." It was not argued that he was "biased" by reason of his employment, and under the circumstances Section 919 of the Code seems applicable:

"No verdict shall be set aside for any cause which might be alleged as ground for challenge of a juror before the jury are sworn, except when the objection to the juror is that he had *a bias* against the defendant such as would have disqualified him, and *such disqualification was not known to or suspected by the defendant or his counsel before the juror was sworn.*"

But if it were inferable from the record that counsel for defendant intended to include in the language "salaried officer of the Government" an objection to the juror arising from his employment, in addition to his alleged disqualification under Section 217, *supra,* was the nature and character of such employment such as to have, *ipso facto,* disqualified him by reason of his bias necessarily resulting therefrom? As heretofore stated, the juror swore that he was a druggist; that he had formed no opinion about the case; that
286 his drug-store was a postal sub-station of the Washington City Post Office; that his compensation as clerk in charge of such sub-station was $300.00 per annum, out of which he paid clerk hire and rent; that such a sub-station was one of the things in connection with the drug business that can hardly be avoided; that a drug-store to keep up its prestige must sell postage stamps and may as well get paid for it as to do it for nothing. It should also be noted that the case on trial was one in which the defendant was charged with a conspiracy to defraud, not the Post Office Department, or the Washington City Post Office, but the United States. Its legal status was that of the ordinary criminal case in which the United States prosecutes for violation of one of its statutes. If Haley was disqualified by reason of bias inferable from his employment, he would be incompetent for the same reason in any criminal case in which the

United States prosecuted; for the record fails to disclose that his special employment would be jeopardized in any degree by his action as a juror; that he knew anything of the facts of this particular case, or that the result of the trial would have any effect upon him whatsoever.

Confining our decision to the circumstances disclosed by this record, and in view of the state of the record, it does
287 not appear that error was committed in overruling the objection to this juror.

The assignments of error numbered from five to thirteen, both inclusive, are based upon exceptions taken to the admission of testimony offered by the Government relative to the taking by defendant from the files of the Fabrikoid Company of a letter written by him under date of April 18, 1902, to the New York Leather and Paint Company, a carbon copy of that Company's reply, and the erasure, by defendant, in the index of the reference to the page in which the copy was to be found. It appears from the testimony of John Aspinwall, President of both companies, that the defendant visited his place of business at Newburgh, New York, in the latter part of 1903, and requested the privilege of looking over his correspondence with the Fabrikoid Company; this was granted, the witness not being present when such examination was made, and that afterwards witness discovered that the copy above referred to had been taken from the book and the erasure made in the index. No question was made by defendant as to the accuracy of this testimony; indeed, his counsel not only admitted it, but produced the two letters in question, which were read to the jury. The witness thereupon stated that when he discovered the loss of the letter from his copy book he wrote defendant a letter, charging him with its abstraction.
288 This letter was admitted in evidence without objection on the part of defendant. Thereupon defendant offered a letter written to the witness by his counsel in reply to the letter last mentioned, in which it is stated that defendant supposed that the witness was willing that such correspondence should be taken from the files. This last letter was ruled out, as was a subsequent reply written by witness to defendant's counsel, the Court stating as ground for the ruling that defendant could offer the last two letters as part of his defense. Thereupon defendant moved to strike out the letter from Aspinwall charging defendant with taking the letter and making the erasure, which was overruled.

Subsequently, when defendant was on the stand, his counsel offered his letter to Aspinwall and the latter's reply. Objection to each was sustained. The defendant testified that Aspinwall did give him permission to take what he wanted. He was then asked why he took them and what he did with them, to which objection was made and sustained. He was allowed, however, to give his reason for making the erasure in the index.

It is difficult to understand the theory upon which the letter from Aspinwall to defendant, charging the latter with taking the letters and making the erasure in the index, was admissible. But it
289 was admitted without objection, and the subsequent motion to strike it out was addressed to the discretion of the trial court.

The reply written by defendant's counsel was plainly inadmissible, but had its exclusion been an error, it was cured by the fact that the defendant when on the stand offered the same explanation of his action, viz: that he understood that Aspinwall had consented that he might take such of the files as he desired.

A more serious question is raised by the refusal to permit defendant to testify as to his intention when he took the letters from the files. The record is silent as to the object of the Government in offering the testimony of Aspinwall. In the brief of the district attorney it is stated that "the Government was proving by secondary evidence the contents of a written instrument;" but the entire discussion upon this portion of the testimony and the rulings of the Court indicate that the real object of the introducton of the circumstances in question was to show conduct on the part of the defendant in connection with his possession of these letters and the erasure in the index indicative of guilt. This being the case, the intent of the defendant in obtaining possession of the letters was material, and, being material, the defendant should have been permitted to testify as to his intent or motive. 1 Wigmore on Evidence, Section 581.

290 In only one jurisdiction has any clear sanction been given to the proposition that persons are disqualified to testify as to their own intent and motive; and the only cases cited in the appellee's brief upon this proposition which are distinctly in point are from that jurisdiction.

Was the refusal to permit defendant to testify as to his intent harmful to his case? To answer this question correctly, it is necessary to consider the proof offered by the Government bearing upon defendant's action in this particular; what defendant was permitted to show in explanation or contradiction thereof, and what, if anything, would have been added to such explanation or contradiction if he had been permitted to answer the specific question as to the intent with which he took the letters.

The testimony offered by the Government on this point went no farther than showing that defendant visited the office of the Fabrikoid Company, examined its letter files with the consent of Mr. Aspinwall, its President, and, without the latter's consent, took the two letters in question and erased from the index of the letter-book the page at which one of the letters was to be found. There was no testimony as to the intent with which he took the letters, or that he destroyed or suppressed them. They were, in fact, produced by his counsel at the trial. Defendant, testifying in his own behalf,

291 admitting the taking, but denied that it was surreptitious, stating that Mr. Aspinwall put him in a room by himself with the files and said to him: "Here are the files, and here is a room for you to go in and work by yourself, *and you can have what you want.*" Defendant had already testified as to his purpose in examining the files, viz: that he had been looking over his correspondence *in order to be able to show everything*, and that he found a great many things missing, and he wanted to look over the files of the company and take what he wanted. He was also permitted to testify as to his reason for erasing the index number in the letter-book, and that he did so

"with the idea of putting that," *i. e.*, the letter from the company, "back, and making the file perfect." It is therefore clear that the defendant was permitted to offer testimony fully meeting the Government's contention that he had taken the letters without the consent of their custodian; further, that on the subject of his intent in taking them he was permitted to offer testimony from which the only possible inference was that he desired them in order that he might show everything wtth reference to his transactions with the Fabrikoid Company; and that as to one letter, at least, he was permitted to testify that he took it with the intention of putting it back. To have permitted him to testify, as he offered in addition to the fore-
292 going, that he took them with the intention of showing them to his counsel, would have added little, if anything, to his explanation; indeed, as already stated, such testimony was not directly responsive to that offered by the Government, viz: that he had taken the letters surreptitiously. This latter allegation he was permitted to negative fully and explicitly. It is impossible to conclude that the refusal of the learned trial justice to permit him to testify more fully as to what he intended to do with the letters was prejudicial to his defense.

This conclusion is strengthened by an examination of the two letters in question. They contained no statements which incriminated the defendant or tended in any degree to establish the conspiracy charged in the indictment. This fact would tend to negative the existence of a sinister intent on his part in taking the letters.

The fourteenth and fifteenth assignments of error are directed to the refusal of the Court to allow the defendant to offer evidence as to his conduct after he had reason to believe he was suspected of the offense charged, such evidence tending to show a consciousness of innocence on the part of the defendant. The argument is that, inasmuch as the Government had offered evidence tending
293 to show by his conduct a consciousness of guilt on his part, it was competent for him to put before the jury the evidence rejected. No adjudicated case is cited to support this proposition, and in the paragraph cited by appellant from Professor Wigmore's chapter on the subject of conduct as evidence of guilt or innocence, the statement is made that "a majority of the courts profess to refuse to allow conduct to be considered for the purpose of drawing an inference of consciousness of innocence." The rule is so well established that such testimony is not admissible that it is unnecessary to cite authorities on the proposition.

The sixteenth and seventeenth assignments refer to the refusal of the court to admit in evidence a private account book of the defendant. The latter testified that the entries showed the moneys he drew on account of the Company, and was kept for the purpose of submitting to the President of the Company, Mr. Chance; that he *that he* submitted the book, as it stands, to Mr. Chance. Counsel for defendant made the offer in the following terms: "I offer it for the sole purpose of showing that Mr. Chance was advised. The witness already testified he had told him verbally. I offer the record, now,

in evidence, for the purpose of showing that he was advised of it in writing." In other words, the book was offered as corroborative of the testimony of the defendant that he had informed Mr. Chance verbally of the payments. The question involved is covered by the ruling of this Court in Gurley *vs.* McLeman, 17 App. D. C. 170, where it is said: "We know of no case, and we find no case cited, in which either books of accounts or other memoranda were admitted in evidence, when it appeared that there were living witnesses present cognizant of the transaction sought to be proved and fully competent to testify in regard to it."

The eighteenth and nineteenth assignments raise the question as to the defendant's good faith in contracting to furnish shoulder-straps with the satchels. He offered in evidence a number of letters written by him, as representative of the Postal Device and Lock Company, prior to making the contract with the Government, to various firms, seeking bids from them for the manufacture of shoulder-straps. These letters were offered for the purpose of showing that defendant was trying in good faith to get bids for the manufacture of bags and shoulder-straps. They were excluded, the Court saying: "If the *bona fides* of the contract with the Government were involved, or if the question of the good faith of the defendant with respect to the quality of the material used in fulfilling the contract were involved, I should see some relevancy in these letters, but the only fraud claimed, as I recall, is that the agreement was to vest a Government officer with an interest in the proceeds of a valid contract." The contention of counsel for defendant was, as stated in the record, that "defendant was trying, in good faith, to get bids for the manufacture of bags and shoulder-straps." But how could that fact have any evidentiary bearing upon the question of whether an unlawful agreement existed between Machen, Lorenz and the defendant for a division of the proceeds of a contract made to furnish such bags and straps? There was no contention by the Government that the contract between the Government and the Postal Device and Lock Company was fraudulent in respect of the materials furnished, or in any other respect than the unlawful division of the profits accruing therefrom.

Defendant contends that if he was acting in good faith as to the shoulder-straps, the jury should have been instructed that the fact that they were not furnished was not evidence that he had agreed that Machen might have a part of the proceeds of the contract, as requested in defendant's prayer No. 8, which was refused, and which reads as follows:

""The jury are instructed that if they find from the evidence that when the contract of June 25th, 1902, between the United States and the Postal Device and Lock Company, in evidence was entered into, the defendant, Crawford, in good faith, expected and intended that the Postal Device and Lock Company should furnish shoulder straps with the satchels of class "A" and class "C", referred to in said contract; that afterwards August W. Machen, Superintendent of General Delivery in the Post Office Department, in his official capacity, and of his own motion, directed that the shoulder strap known as the "Lamb Strap" should be used

with satchels delivered under said contract; that it was impossible for the Postal Device and Lock Company, or said Crawford, as its general manager to obtain said straps; that the Lamb strap was accordingly furnished by the Government with the understanding on the part of said Crawford as the representative of said company that at the end of each fiscal year a reasonable and proper deduction should be made from the amounts payable to said Company under said contract on account of its not furnishing shoulder straps for satchels of Class A and Class C, as required by the terms of said contract; and that in this regard said Crawford acted in good faith, and without any intent to inflict any pecuniary loss upon the Government, or to defraud it in any way, then the jury is instructed that as to indictment No. 24,688 they are not to consider the fact the shoulder straps were not furnished with the satchels as evidence of the guilt of the defendant, Crawford."

The vice of this prayer is that it ignores the well settled rule of evidence in cases of conspiracy that the overt act of each conspirator, when done in pursuance of the conspiracy, or in reference to the common object, becomes the act of all and is original evidence against all. Thus, if defendant entered into conspiracy with Machen and Lorenz for a division of the proceeds of the contract, and in effecting or facilitating that object Machen or Lorenz, or both, adopted the expedient of relieving the contractor of furnishing the shoulder-straps and imposed that liability upon the Government, the defendant would be bound by his or their act, although he might have intended to furnish the straps or have their cost deducted from the contract price at the time of settlement.

297 Under the rule stated there was no error in admitting evidence of payments made by the Government to George D. Lamb for shoulder-straps furnished by him, which is the subject of the twentieth assignment of error.

The twenty-first assignment involves the following testimony of the defendant: The latter was asked by his counsel to state what was the substance of the conversations with Lorenz and whether he arrived at any result with him. Witness replied: "What we arrived at was that I thought he was a good man and had valuable information and that he could——

Mr. BAKER: I object to the witness stating his thoughts.

Mr. WORTHINGTON: I respectfully submit that his thoughts are of the utmost importance. The whole question here is what he thought when he entered into this arrangement with Lorenz.

* * * * * * *

The COURT: He is entitled to give his motives, of course, with respect to any agreement he entered into; but is not that different from the statement of his thoughts with respect to an individual?

* * * * * * *

The WITNESS: I am coming to the agreement. These are
298 the motives which led me into the agreement."

Thereupon, on motion, the Court struck out what the witness had stated. The record proceeds to state that the witness then testified that Lorenz at that time, among other things, said that he

had been Postmaster at Toledo, and had had experience in these things, and knew all about mail bags and wanted to combine with the Postal Device and Lock Company, etc.

There is no merit in this assignment of error. The witness was permitted to give his conversations with Lorenz, the facts which induced him to enter into a combination with him and even his motives for so doing. If what he thought of him was relevant, it was surely disclosed by his subsequent testimony.

It is urged that the court erred in refusing to allow the defendant's witness, Polk, to testify whether in a conversation between the witness and Lorenz, in Judiciary Square, in 1903, Lorenz said to the witness *in substance* that it would be well for Crawford to testify at the trial that $1,465. and some cents was sent back to him (Crawford) as repayment for the straps—as a payment on account of the straps for those five thousand bags. The Court sustained the objection on the ground that the words "in substance" should not
299 be used; that counsel should put the exact words in the witness' mouth.

When Lorenz was on the stand for the Government he was asked on cross-examination: "Did you not, in this Park, in the fall of the year 1903—when I say 'this Park' I mean Judiciary Square—say to Mr. Polk, in substance, that you had found, that you had discovered that the straps for the 5,000 bags at 29½ cents would amount almost to exactly what you had sent back to Crawford of the $5441.35, and say further to Mr. Polk, in substance, that it would be well for Crawford to testify at the trial that that $1465 and some cents was sent back to him as repayment for the straps, as a payment on account of the straps for those 5000 bags? "A. Now, you ask me whether I said that?

"Q. Yes. A. No, sir!"

Thereupon, the witness' memory having been refreshed as to his testimony on this point at a former trial, this question was asked him: "Well, did this actually happen, then, that you testified to? Did you make this suggestion to Mr. Polk about this coincidence, and suggest that it might be used by way of defense? A. *I don't remember whether it was to Mr. Polk or Mr. Crawford, but a suggestion as to the coincidence in the figures was mentioned by me to one or the other of them.*"

It appears from the foregoing that the witness sought to
300 be impeached admitted having made a part of the statement accredited to him; and it was upon this record that the Court ruled that the contradicting witness should give the exact language used by Lorenz. While the action of the trial court in this respect might be sustained under the authority of Sloan *v.* N. Y. Central Ry. Co., 45 N. Y. 147, where it is stated that "the principle of this subject must be, to some extent, under the control and discretion of the Court;" yet it was certainly justified upon the broader ground that the question asked Lorenz was collateral and that therefore the defendant was bound by his answer.

In the case of Sloan *vs.* Edwards, 61 Md., 89, Chief Justice Alvey states the rule upon the subject, as follows: "It is true the credit of a witness may be impeached by proof that he has made statements out

of Court inconsistent with the testimony given in Court. But it is a general rule that a witness cannot be cross-examined as to any fact which, if admitted, would be wholly collateral, and irrelevant to the matter in issue, for the purpose of contradicting him by other evidence, and in this manner to discredit his testimony. And if the witness answer such an irrelevant question without objection, evidence cannot afterwards be admitted to contradict his testimony on the collateral matter."

301 The rule for determining whether a fact inquired of in cross-examination is collateral is thus stated by Mr. Justice Sharswood, in the case of Hildeburn *v.* Curran, 65 Pa. St., 59: "The rule is well settled that if a witness is cross-examined to a fact purely collateral and irrelevant to the issue, and answers it without objection, he cannot be contradicted. The reason is obvious. The investigation might thus branch out into any number of immaterial issues upon the mere question of the credibility of a witness. * * * The test of whether a fact inquired of in cross-examination is collateral is this: Would the cross-examining party be entitled to prove it as part of his case, tending to establish his plea?"

To the same effect is the case of Welch *vs.* The State, 104 Ind. 347, in which it is said: "Whether the matter inquired of on cross-examination, and proved by the State in impeachment of Cooper, was collateral to the main inquiry or not, is determined by this inquiry: Would the prosecuting attorney have been permitted to introduce it in evidence as part of the State's case? If he would not, it was collateral. If it was collateral, it was not competent to contradict it."

So, in the case of State *vs.* Goodwin, 32 W. Va., 177, the Court said: "To impeach a witness by showing that on another oc-

302 casion he made a statement contradicting one made on the trial, that statement must relate to a matter material to the case—must concern a fact involved in the evidence. There was not and properly could not have been involved in the case or in the evidence given any question as to what Freed said as to the transaction after its consummation. The witness had stated nothing in chief to make it fall under the rule of Forde's Case, 16 Gratt. 547, that a witness may be impeached as to a matter, though collateral, if the statement be made in chief; nor could the State have introduced, to support the issue on its side as evidence independent of impeachment purposes, proof of the declaration so made by Freed; and for that reason it could not be let in to contradict a witness as to this collateral and irrelevant matter; for when a witness is cross-examined on a matter collateral to the issue, his answer can not be subsequently contradicted by the party putting the question. The test of whether a fact inquired of on cross-examination is collateral, is this: Would the cross-examining party be entitled to prove it as a part of his case tending to establish his plea?

There can be no doubt but that the fact sought to be brought out by the question asked Lorenz would have been inadmissible as part of the testimony on behalf of defendant.

Nor did the fact sought to be proved show bias or preju-

303 dice on the part of Lorenz towards the defendant. If it had any tendency whatever in that respect, it would tend to show

a friendly disposition towards him, as it suggested an apparently plausible explanation of defendant's receipt of part of the proceeds of the contract.

The twenty-third, twenty-fourth and twenty-fifth assignment of error involve the refusal of the trial court to allow the defendant to testify to statements made by him at a conference when Lorenz and his counsel were present.

The questions asked defendant by his counsel were as follows:

"Q. I will ask you whether, at that time, you said that Lorenz understood that the remittance which Lorenz was making back to you—that Lorenz understood that you were to keep them and it was a secret, but that, as a matter of fact, you intended to account to your company for them?"

"Q. I will ask you whether, at that time, you said that Lorenz had come to your office in the spring of 1903, and had had a conversation with you about relinquishing the contract between him and the Postal Device & Lock Company?"

"Q. I will ask you whether you said, at that time, in the hearing and presence of Lorenz and his attorney, that you did not know or have any knowledge of any payments that Lorenz was making to Machen out of the money sent to him?"

304 That these three questions call for self-serving declarations made by the defendant is so evident as to require no discussion. The testimony sought was inadmissible under any rule of evidence, no matter how broadly construed.

It is contended that error was committed in refusing to permit the defendant to answer the following question:

"Q. Now I will ask you whether in the fall or whether at any time prior to the first trial of this case, and after the investigation began, Mr. Lorenz came to your office one night and requested you to mark this contract between him and the Postal Device and Lock Company cancelled, and deliver it to him at his box at the Riggs House?"

In his cross-examination, Lorenz had denied that he had any such conversation. No question was asked him on his direct-examination touching this matter. Being collateral, it was not error to refuse to admit testimony for the purpose of impeaching him, within the authorities heretofore cited.

The twenty-seventh assignment of error relates to the admission of testimony in rebuttal which defendant claimed was only admissible as part of the Government's case in chief. The language of the Supreme Court, in the case of Goldsby *vs.* United States, 160 U. S., 70, fully meets this contention: "It was obviously re-

305 buttal testimony; however, if it should have been more properly introduced in the opening, it was purely within the sound judicial discretion of the trial court to allow it, which discretion, in the absence of gross abuse, is not reviewable here."

It is urged that the court erred in refusing to permit defendant's counsel to argue to the jury concerning the failure of the Government to ask its witness, Trask, if Chance had told him of the remittances made by Lorenz to the defendant. Inasmuch as the Govern-

ment would not have been permitted, over objection, to prove what Chance said to Trask by the latter's statement, its failure to ask the question was not a proper subject of comment to the jury.

The twenty-ninth assignment of error refers to a remark made by special counsel for the Government in reply to a question asked him by defendant's counsel in the course of the latter's argument to the jury. The observation was not directed to the jury but was provoked by the question and was addressed to the questioner. In view of the testimony adduced by defendant in his cross-examination of Lorenz, its impropriety is not manifest. But even if it were, inasmuch as the remark was not addressed to the jury, it was not error on the part of the trial court to overrule the motion that the jury disregard it. In the course of a protracted and hotly con-
306 tested trial many incidents occur between counsel which must be left to the discretion of the trial court. The jury is sworn to try the case upon the evidence and it cannot be assumed that their verdict will be affected by remarks which opposing counsel so frequently address to one another in the heat of advocacy.

The thirtieth and thirty-first assignments alleged error in the action of the trial court in refusing to grant defendant's motion to discharge the jury because of a remark made by special counsel for the Government during his closing argument to the jury. It will be remembered that the indictment under the first count of which defendant was convicted charges Machen, Lorenz and the defendant with conspiring to defraud the United States. On May 23rd, 1905, Machen was granted a severance and thereupon pleaded guilty. The objectional statement by the special counsel of the Government was as follows:

"This indictment, or the one we are more concerned with here, charges that Machen and Lorenz and Crawford entered into an unlawful agreement to defraud the United States—a conspiracy, they call it. Machen has pleaded guilty, Lorenz has pleaded guilty——

"Mr. WORTHINGTON: One moment. Your Honor, I ask that the jury be instructed that they are not to consider that statement (that Machen had pleaded guilty).

"Mr. CONRAD: It has been stated a dozen times here. The
307 gentleman has himself stated it.

* * * * * * *

"Mr. CONRAD: The jury will not consider it as operating on Crawford——

"The COURT: I have to instruct the jury that they are not to consider that statement.

"Mr. CONRAD: Do not consider it, gentlemen, in any way."

Counsel for defendant moved the court to discharge the jury from the further consideration of the case because of the statement made by counsel for the Government. This motion was overruled. Thereupon the court inquired of counsel for the defendant if his instructions were full enough with reference to the objectionable statement, to which counsel responded: "I think your Honor has done all you could do in that regard."

Thereupon special counsel for the Government resumed as follows: "I hope I shall not transgress when I say to you that Lorenz has appeared before you on the witness stand and confessed this business and told you how it occurred. The third man, Mr. Crawford, has pleaded not guilty, and you are trying him. That is the situation. My reference to Machen was not that you might
308 consider it against this man at all. You could not. But it is a fact that you all know and it has been repeated a dozen times in this case." Counsel for the defendant objected to this repetition of the statement; and the court repeated the instruction to the jury theretofore given.

Inasmuch as the fact that Machen had pleaded guilty was neither in evidence nor admissible in evidence, the statement of special counsel was improper. But the situation is clearly within the ruling of the Supreme Court in Dunlop *vs.* United States, 165 U. S., 486, when that Court said: "The court held it"—language used by the District Attorney in his argument to the jury—"was improper, and the District Attorney immediately withdrew it. The action of the court was commendable in this particular, and we think this ruling, and the immediate withdrawal of the remark by the District Attorney, condoned his error in making it, if his remark could be deemed a prejudicial error. There is no doubt that, in the heat of argument, counsel do occasionally make remarks that are not justified by the testimony, and which are, or may be, prejudicial to the accused. In such cases, however, if the court interfere, and counsel promptly withdraw the remark, the error will generally be deemed to be cured. If every remark made by counsel outside of the testimony were ground for reversal, comparatively few verdicts would stand, since in the ardor of advocacy, and in the excitement
309 of trial, even the most experienced counsel are occasionally carried away by this temptation."

This case has been followed in the recent case of Sawyer *vs.* United States, 202 U. S., 150, in which the Court held that an improper remark made by the District Attorney was no ground for setting aside a verdict where the trial court held it was improper and counsel withdrew it.

In the case of State *vs.* Phillips, 117 Mo., 389, the identical question involved in these assignments was passed upon, the Court saying: "On argument before the jury, one of the counsel for the prosecution made the statement that Brown had been convicted and sent to the penitentiary for ten years. Upon objection made to this statement the court reproved the attorney and told the jury that they had nothing to do with the fact that Brown was in the penitentiary. In such circumstances it should not be held that reversible error had occurred, especially so, as the fact of Brown's conviction must have been well known in the community. Indeed, Brown's name was frequently, and of necessity, mentioned during the trial as one of the co-indictees in the case, and mentioned also in the indictment and in the instructions."

From the decisions of the Supreme Court and of this Court and from the weight of authority in other jurisdictions, it may be
310 laid down as a general rule that a withdrawal of objectionable remarks made by a prosecuting officer, either by himself or

by the Court, or a timely direction by the Court to disregard them, will be deemed to have removed any prejudice produced in the minds of the jury thereby, and to have so far cured the error that a reversal will not be had therefor. Jurors are supposed to be competent to understand, and willing to obey, the instruction of the court as to what they shall and shall not consider in reaching a verdict. Brady *vs.* United States, 1 App. D. C., 246; Price *vs.* United States, 14 App. D. C., 399; Yaeger *vs.* United States, 16 App. D. C., 362; Lorenz *vs.* United States, 24 App. D. C., 337; Field *vs.* United States, 27 App. D. C., 433.

The case of Capital Construction Co. *vs.* Holtzman, 27 App. D. C., 125, cited in appellant's brief, is clearly distinguishable from the cases cited. There the judgment was reversed because of incompetent testimony admitted over objection, which testimony was used in argument to the jury by counsel who adduced it, and no instruction was given to disregard it.

The thirty-second and thirty-third assignments of error are based upon the refusal of the court to grant defendant's thirteenth and fifteenth prayers. The first instructs the jury that payments made by Lorenz to Machen were not to be considered by the jury *for any purpose whatever,* unless they were satisfied by the evidence
311 beyond a reasonable doubt that before said payments were made the defendant had agreed with Machen and Lorenz or with one of them that said payments should be made by Lorenz out of moneys received by him. Had this prayer been granted, the jury would have been forbidden to consider the fact that defendant's associate, Lorenz, was using part of the proceeds of their contract with the Government to corrupt a Government official, as a circumstance from which, in connection with others, they might deduce an agreement to divide said proceeds. It was properly refused.

So with the fifteenth prayer which seeks to limit the evidential force of the payment of twenty-five per cent. by Lorenz to defendant to the question of defendant's connection with the conspiracy. As an overt act, the fact of such payments was admissible against all the parties to the conspiracy.

Finding no substantial error in the record, and being satisfied therefrom that defendant had a fair and impartial trial in accordance with the settled rules of criminal law and procedure, the judgment will be affirmed.

312 (*Dissenting Opinion by Mr. Chief Justice Shepard.*)

I find myself unable to assent to the judgment in this case for the following reasons:

1. In my opinion there was error in overruling the defendant's challenge of the juror Haley. I agree that in so far as Section 217 of the Code is concerned, the juror, even if he may be regarded as "a salaried officer of the United States," in a technical sense, had merely a right to claim exemption from jury duty thereunder. It was not a positive disqualification which required him to be set aside without his claiming the exemption. I think, however, that the objection

went farther than this, and directly raised the question of his eligibility in the particular case as an employee of the government, receiving a stated salary, which he clearly was. The rule of the common law on this subject is thus stated by Blackstone: "Jurors may be challenged *propter affectum,* for suspision of bias or partiality. This may be either a principal challenge, or to the favor. A principal challenge is such, when the cause carries with it *prima facie* evident marks of suspicion either of malice or favor; as, that a juror is of kin to either party within the ninth degree; that he has been arbitrator on either side; that he has an interest in the cause; that there is an action depending between him and the party; * * * that he has formerly been a juror in the same cause; that he is the party's master, servant, counsellor, steward, or attorney, * * * all these are principal causes of challenge; which, if true, cannot be overruled, for jurors must be *omni exceptione majores* (above all exception)." (3 Blackstone, 363). See also Thompson & Merriam on Juries, p. 176.

By an overwhelming weight of authority this rule is recognized in this country; and there is no provision of our Code changing it or impairing its vigor.

A few cases only need be cited in which it has been held that it is error to permit a clerk or employee of a private party or a corporation to sit as a juror over the objection of the opposite party. C. R. R. Co. *v.* Mitchell, 63 Ga., 173, 179; Hubbard *v.* Rutledge;
313 57 Miss., 7, 12; L. & N. R. R. Co. *v.* Mask, 64 Miss., 733, 744; Burnett *v.* B. & M. R. R. Co, 16 Neb., 435, 445; Omaha R. R. Co. *v.* Cook, 37 Neb., 332, 334; H. & T. C. R. R. *v.* Smith (Texas Civil Appeals) 51 S. W. Rep., 506; Mich. Air Line Ry. Co. *v.* Barnes, 40 Mich., 383, 385. In L. & N. R. R. Co. *v.* Mask, *supra,* the Court said: "It does not matter that he had the self confidence to swear that he could try the case impartially. It was not for him to determine his competency on that point. When the fact was developed that he was in the employment of the appellant the law adjudged him incompetent. The law does not lead jurors into the temptation of a position where they may secure advantages to themselves by doing wrong, nor permit the possibility of the wavering balance being shaken by self-interest."

These were all civil cases. For a stronger reason the doctrine applies in criminal prosecutions. The juror in this case was not only in the employment of the United States, receiving a salary for his services; but also exercising a privilege valuable to him in his business. It caused his drugstore to be frequented by the public, some of whom he could reasonably expect to become his customers. He was not even an employee protected by the rules of the Civil Service. It is not to be presumed that the juror would have lost his employment or privilege in the event of agreeing to a verdict unsatisfactory to those in a position to take it from him at will, or that he would necessarily have been influenced by such an apprehension. The law is not made for particular individuals, but for all persons similarly situated; and as said by the Supreme Court of Mississippi, it does not permit one to be subjected to the possible temptation to do wrong.

All rules tending to preserve the integrity and impartiality of the jury should be strictly observed. The vitality and efficiency of trial by jury depend upon it.

2. I am also convinced that error, for which the judgment ought to be reversed, was committed in the exclusion of evidence offered to show the motive or intent of the defendant in removing cer-
314 tain letters from the files of the Fabrikoid Company, which act was proved by the Government as a circumstance tending to show guilt. To present the question clearly, it is necessary to state all of the proceedings having relation to it.

It appears from the bill of exceptions that John Aspinwall, President of the Fabrikoid Co. of Newburgh, N. Y., was produced as a witness by the Government. He identified two letters written by him to the defendant, on February 18 and 28, 1902, respectively. He testified that defendant visited his place of business in the latter part of 1903 and requested the privilege of looking over the correspondence of the Fabrikoid Company—his letters to the Company and copies of the Company's letters to him in its letter book. That defendant was permitted to examine the same in the absence of the witness. After his departure, witness discovered that a letter from the defendant and a copy of a letter that had been written to him had been removed from the copy book. This copy was a carbon sheet pasted in the letter book under its proper date, and indexed therein. The letter that had been removed had been indexed, and the index entry had been erased. The letter book from which the copy had been removed was exhibited to the jury. Counsel for defendant admitted that the letter had been removed from the letter book and the erasure made, and produced the letter taken therefrom. Counsel for the Government read in evidence the said letter of defendant of April 18, 1902, and the letter of April 21 by the Company in reply thereto, both of which had been removed from the letter book of the Company. The letter of defendant related to the prospectus for obtaining the contract for bags manufactured of fabrikoid, and asked if there had been any other calls for the leather of the Company for the same purposes, and, in particular, if a call had been made on the 17th, 18th, or 19th inst. from a Mr. Lorenz, and added, "if so please turn him down and notify me." The reply thereto stated that no call had been made by Lorenz and that the contract sent by defendant had been signed and forwarded, adding "In this contract I made no statement relative to your
315 commission, but simply gave the discounts which I had quoted you." The letter written by the witness to defendant December 7, 1903, called his attention to a matter that had just come to the knowledge of the writer, which he did not like. He referred to the removal from the files of the copy of the letter and the erasure of the page from the index, stating that circumstantial evidence directly pointed to defendant, adding: "We gave you without question the right to look through our correspondence, and this has deeply affected us as a want of good faith on your part." The letter concluded thus: "We have not yet gone through other files to find how many other letters may have been removed, but in view of this we would not be surprised to find that some other correspondence

may have disappeared." Witness then stated that he had received a reply to this letter from the counsel for defendant. Defendant's counsel then offered in evidence this reply, which was objected to and excluded. Counsel then moved to strike out the letter of witness which had just been read. He said: "I concede that this transaction is evidence proper to go before a jury. A letter has been read from the witness to defendant, calling attention to the disappearance of these papers from his office, which letter could, as I respectfully submit, be of no possible relevancy or pertinency in this case, unless coupled with the answer that might be made to it. It contains statements made by the witness which would not be evidence for a moment. He has stated what took place; what he wrote to Mr. Crawford or anybody else, I submit, should not be evidence for any purpose; and I did not object to the letter being offered in evidence because I took it for granted that it was going to be connected with Mr. Crawford by showing what answer came to it. Now, I am very anxious, since this letter has been gone into, that the jury should have the whole thing. I was anxious that what followed in the way of correspondence between this Company and Mr. Crawford's counsel should not appear here for very obvious reasons; but when it has been gone into, I want the whole of it to go in."

316 The Court said: "I cannot see that this letter from Mr. Crawford's counsel should be considered by the jury. The letter written to Mr. Crawford is relevant as tending to prove that he was charged by Mr. Aspinwall with abstracting the letter from the files."

COUNSEL: "My point is this: If the charge had been made in Mr. Crawford's presence, of course, it would have been competent to show his conduct and demeanor. But the charge, I submit, would not be competent for any purpose except as connected with what he did; and so when a letter is written to a man which contains statements about something which he is said to have done, I submit that it is not competent." It was further said: "Can the charge made to him stand, and not the fact of his denial?"

The District Attorney stated that the letter was offered for the sole purpose of showing that it was brought home to Crawford's knowledge that Aspinwall knew that he had taken these letters away with him. That it was not claimed that Aspinwall could make a charge in that letter that would stand against the defendant at all; but we do claim that we have a right to argue from that letter that Crawford knew, in 1903, that Aspinwall knew that he had discovered this.

COUNSEL FOR DEFENDANT: "I can see how it might have effect to know that a charge was made against him, and that he did not deny it; and yet here a charge is to be made against a man, and his denial shut out. Now I respectfully submit that either the charge and the denial should both go in, or they should both go out."

Counsel for defendant then offered the letter of witness of December 10, 1903, replying to the letter received from counsel, which the Court also excluded. This letter tended to qualify the charge made in the letter to defendant that had been read in evidence.

At a subsequent stage of the trial, and in the course of defendant's

testimony on his own behalf, counsel exhibited the letter to
317 Aspinwall of December 8, 1903, written by counsel, which had been excluded, as heretofore noted. The witness said the letter was sent by his authority. This letter was again offered in evidence, and excluded. Counsel said that he was not disputing the fact that the defendant took the letter, but that he took it without leave. The Court stated he could prove the fact that he took the letter with leave, but could not do so by reading the letter of his counsel. Witness was then permitted to state that he had several letters missing, and went to Aspinwall's office and told him about the prosecution and that he had some of his correspondence missing, and asked him if he would give permission to go over his files and get what he wanted. Aspinwall gave him a room next to his office that was a file room. He "went over the files alone, took some memoranda of dates and contents of letters, and when he came to this particular letter, which he had forgotten about, he deemed it of such great importance"—Here the witness was stopped by an objection. His counsel stated: "I want him to state not only what took place, but I want him to state his intention, and the reason for taking the letter. I want him to state whether he took this evidence with the intention to suppress it, or to destroy it, or with the intent that it might be preserved to be presented to a jury when his day of trial should come." This was objected to by counsel for the Government, who said: "The purpose to which he proposes to apply these papers, and how he proposed to use them, has nothing to do with the question of the taking. He may have done a wrong thing from a good motive. He may have wanted to put these letters to legitimate use. But he has no right—I do not mean to use a harsh term—*to steal evidence which he intends to use legitimately.*" Witness then proceeded to say that Aspinwall told him: "Here are the files, and here is a room for you to go in and work by yourself, and you can have what you want." He then said: "I took the letter of April 18, and took the reply from the letter book." He was then asked why he took them.

This was objected to. Counsel then asked the following ques-
318 tion, telling the witness not to answer until permitted by the Court: "What did you do with these letters after you had taken them?" This was objected to and objection sustained. Counsel said: "I offer to prove that he brought them to his counsel in Washington."

On re-cross-examination by the Government, he was asked if he did not testify, as shown by the report of his evidence on a former trial, as follows: "I did not think that Mr. Aspinwall would want me to take a letter, mutilate his files; I did not think that he had any objection except on that ground; but I did not think he would want any one to mutilate his file, and I took the letter out and rubbed that out, so that he would not know, and that I might have possession of the letter." The defendant stated that he so testified. An attempted explanation by the witness was excluded as argumentative. Counsel for defendant then stated that in view of the matter having been gone into, on re-cross-examination, he would ask witness the following question, stating to him not to answer until given leave:

"What did you do with the letter which you took from the letter-press book of Mr. Aspinwall after you had taken it?" Objection to answer to this question was sustained.

It will be observed that counsel for defendant had not objected to Aspinwall's evidence of the spoliation of the letter book, for the reason stated that it was conceded to be admissible as a circumstance tending to indicate a consciousness of guilt. He relied upon proving by the defendant that his motive was not an evil one, and that the act was done for the purpose of actually preserving the letters. This is made clear by the concluding recitals as follows:

"Thereupon counsel for the defendant made the following statement:

" 'Before I go on, your Honor, I want to move to strike out so much of the testimony especially of Mr. Aspinwall as relates to the taking from his office of the letter of April 18th, 1902, and
319 the reply thereto dated April 21st. The ground of the motion is that the defendant's counsel understood it was offered for the purpose of showing an attempt on the part of the defendant to suppress testimony. But since the Court excluded the evidence of the defendant tending to show that he took the letters for the purpose of preserving them as testimony, and that he had no intent to destroy them, I can conceive of no part which that testimony can play in the case. I therefore move to strike it out.'

"The COURT: The question, as I recall, was not objected to at the time. The witness was under cross-examination, and it was admitted for the purpose of testing the credibility of the witness.

"Mr. WORTHINGTON: Your Honor is right; it was not objected to, and I did not object to it, because I conceived and conceive now that it was competant; that the purpose of it was to show an attempt on the part of the defendant to suppress evidence. Of course it would be competent then. I offered to show by him that that was not his intent, however, and that he took the letters for the purpose of preserving them, as evidence, and how they came to be preserved. But your Honor excluded all that.

"The COURT: And I was about to say that had the objection been made I would have admitted it, upon the theory I had in mind at the time of making the other rulings which followed later. That was that specific acts of a defendant or anybody else who comes on the stand as a witness, if they are of a nature which in the judgment of the Court tends to throw light in the minds of the jury upon the moral makeup of the individual, and thus enable them to come to a conclusion as to what his sworn word is worth, may always be had, subject only to the discretion of the Court as to the point. That discretion ought to prevent any abuse of any witness, or any holding upon a witness to ridicule or disgrace, or anything of the sort; and I was then and am now of the opinion that the mere fact, if it can be proven by the cross-examination of a witness, whether he ab-
320 stracted a letter from anybody else's files, is a fact that may tend to throw light upon the question in the minds of the jury; and that is why it was admitted."

In view of these recitals it is idle for the Government now to urge that the sole purpose of offering Aspinwall's testimony was to prove

the contents of a letter then in the possession of the defendant, and which he was ready and willing to produce. The purpose plainly was not only to prove an attempted suppression of evidence, but to aggravate that act by showing that it was done surreptitiously; in other words, was, as charged, an attempt to "steal evidence." In reply to this evidence the defendant had not only the right to deny taking the letters without consent of Aspinwall, but the clear right to testify to his intent or motive, to remove, as far as might be possible, the effect of the incriminating act. In the language of the Supreme Court of the United States: "It has often been decided that where the intent is a material question, the accused may testify in his own behalf as to what his intent was in doing the act." Wallace *v.* United States, 162 U. S., 466, 477.

My brethren concur in the view that the refusal of this evidence was error, but decline to reverse the judgment therefor, because, in their opinion, the exclusion of the evidence was not harmful error. I cannot agree with that conclusion. It has been said by the Supreme Court of the United States that: "It is elementary that the admission of illegal evidence over objection necessitates reversal." Waldron *v.* Waldron, 156 U. S., 361, 380; Throckmorton *v.* Holt, 180 U. S., 552, 557. The doctrine applies equally to the rejection of legal evidence. The respective provinces of Court and jury are clearly delimited. The credibility of witnesses and the weight of evidence are for the exclusive determination of the jury. It is said, that if the defendant had been permitted to testify, he would have added little, if anything, to the explanation he was permitted to make, that he did not take the letters surreptitiously. Grant that this might have been the case, or that his statement of intent
321 might have done his case more harm than good with the jury, still it was their exclusive province to determine the weight to be given it. It is not for the Court to speculate upon its probable effect upon their minds. It is to be remembered in this connection, that the explanation referred to, which the defendant was permitted to make, related solely to the charge that he had taken the letters without the consent or knowledge of Aspinwall. This want of knowledge by Aspinwall was but an incident of the main, incriminating fact that he had attempted to suppress evidence; and would have been utterly inadmissible as an independent, unrelated circumstance. As an incidental and related circumstance it tended to strengthen the inference that in taking the letters he intended to suppress evidence. Had it been indubitably shown that Aspinwall did consent to the removal of the letters, the effect of defendant's attempt to suppress the evidence would remain unimpaired. The fact that Aspinwall had testified to his want of consent to, and even knowledge of the removal of the letters, rendered it more important that the defendant should testify to his intent in taking them, and have the jury determine the weight to be given to his explanation.

For the reasons given, I am of the opinion that the judgment should be reversed.

322 FRIDAY, *May 10th, A. D.* 1907.

No. 1687. April Term, 1907.

WILLIAM GORDON CRAWFORD, Appellant,
vs.
THE UNITED STATES OF AMERICA.

Appeal from the Supreme Court of the District of Columbia.

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia and was argued by counsel. On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said Supreme Court, in this cause be, and the same is hereby, affirmed.

Per MR. JUSTICE GOULD,
May 10, 1907.

Dissenting: Mr. Chief Justice Shepard.

323 Court of Appeals of the District of Columbia.

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 322, inclusive, contain a true copy of the transcript of record and proceedings of said Court of Appeals in the case of William Gordon Crawford, Appellant, *vs.* The United States of America No. 1687, April Term, 1907, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this 22nd day of May A. D. 1907.

[Seal Court of Appeals, District of Columbia.]

HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

324 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Court of Appeals of the District of Columbia, Greeting:

Being informed that there is now pending before you a suit in which William Gordon Crawford is appellant and The United States is appellee, which suit was removed into the said Court of

Appeals by virtue of an appeal from the Supreme Court of the District of Columbia, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Court of Appeals and removed into the Supreme
325 Court of the United States, Do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 24th day of October, in the year of our Lord one thousand nine hundred and seven.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

326 [Endorsed:] No. 1687. File No. 20,725. Supreme Court of the United States. No. 323, October Term, 1907. William Gordon Crawford *vs.* The United States. Writ of Certiorari. Court of Appeals, District of Columbia. Filed Oct. 29, 1907. Henry W. Hodges, Clerk.

327 In the Court of Appeals of the District of Columbia.

No. 1687.

WILLIAM GORDON CRAWFORD, Appellant,
vs.
THE UNITED STATES.

It is hereby stipulated and agreed that the transcript of record in this case on file in the Supreme Court of the United States may be taken as a return to the writ of certiorari to the Court of Appeals of the District of Columbia.

HENRY M. HOYT,
Solicitor General.
DANIEL W. BAKER.
A. S. WORTHINGTON,
Attorney for Appellant.

(Endorsed:) 1687. William Gordon Crawford, Appellant, *vs.* The United States of America. Stipulation as to Transcript. Court of Appeals, District of Columbia. Filed Nov. 1, 1907. Henry W. Hodges, Clerk.

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, de hereby certify, in obedience to the writ of certiorari hereto attached and returned herewith, the foregoing to be a true and correct copy of the stipulation of counsel filed in said cause on the 1st day of November, A. D. 1907.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of said Court at the City of Washington, District of Columbia, this 4th day of November, A. D. 1907.

[Seal Court of Appeals, District of Columbia.]

HENRY W. HODGES, *Clerk.*

[Endorsed:] 323, 20725.

328 [Endorsed:] File No. 20,725. Supreme Court U. S. October Term, 1908. Term No. 92. Wm. Gordon Crawford, Petitioner, *vs.* The United States. Writ of Certiorari and return. Filed Nov. 5th, 1907.

In the Supreme Court of the United States.

OCTOBER TERM, 1907.

WILLIAM GORDON CRAWFORD, PETITIONER,
v.
THE UNITED STATES. } No. 323.

MOTION TO ADVANCE.

On December 19, 1905, the petitioner was convicted in the Supreme Court of the District of Columbia on an indictment charging him, together with August W. Machen and George E. Lorenz, with a conspiracy to defraud the United States under section 5440 of the Revised Statutes, growing out of a certain Post-Office Department contract.

A sentence was imposed of imprisonment in the penitentiary for two years, and an appeal was taken to the Court of Appeals of the District of Columbia, which affirmed the judgment of the court below. A petition for a writ of certiorari submitted to this court was granted on October 21 last.

The prompt administration of the criminal laws of the United States is of importance, especially in a case like this which has attracted general public attention. The Solicitor-General, therefore, in accord-

ance with rule 26, section 3, moves the court to advance the case on the docket for hearing on such day during the present term as may be convenient to the court.

Notice of this motion has been served upon opposing counsel.

HENRY M. HOYT,
Solicitor-General.

DECEMBER, 1907.

O

FILED.
MAY 22 1907
JAMES H. McKENNEY
CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. ~~320~~. 92

WILLIAM GORDON CRAWFORD, PETITIONER,

vs.

THE UNITED STATES.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

A. S. WORTHINGTON,
Attorney for Petitioner.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C. 26729

(20,725.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 760.

WILLIAM GORDON CRAWFORD, PETITIONER,

vs.

UNITED STATES OF AMERICA, RESPONDENT.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, William Gordon Crawford, respectfully represents:

1. That on the 3d day of April, 1905, a certain indictment, No. 24,688, was returned against him in the Supreme Court of the District of Columbia by the grand jury in and for said District, in and by which indictment the petitioner, in six different counts, was charged, together with one August W. Machen and one George E. Lorenz, with conspiracy to defraud the United States (Rec., 25-68), in connection with a certain contract between a corporation called the Postal Device and Lock Company and the United States, which contract related to the furnishing by said company to the Post-Office Department of satchels and shoulder-straps for use by letter-carriers.

2. After certain mesne proceedings the petitioner was tried on the plea of not guilty as to counts 1, 5, and 6 of said indictment (a demurrer to counts 2, 3, and 4 of said indictment having been sustained by the court). The jury empannelled for said trial failed to agree and were discharged by the court for that reason (75). Afterwards the petitioner was again tried on said indictment, and on the 19th day of December, 1905, the jury at said second trial found the defendant guilty as charged in the first count of said indictment and not guilty as charged in the fifth and sixth counts thereof (8).

3. On both occasions when the petitioner was so tried he was tried on two other certain indictments, numbered 23,865 and 23,866, and as to both of said last-mentioned indictments the jury disagreed at the first trial. At the second trial the petitioner was found not guilty as to all the counts of indictment No. 23,865 and guilty as to the second, third, and fourth counts of indictment No. 23,866; but the verdict of guilty as to said last-mentioned indictment was thereafter set aside by said court, on a motion in arrest of judgment, on the ground that said indictment charged no offense (1-11, 11-43, 75, 10). On the 30th day of December, 1905, the petitioner, pursuant to his conviction upon the first count of said indictment No. 24,688, was by said court sentenced to imprisonment in the penitentiary, to be kept at hard labor for two years (10).

4. During said last-mentioned trial the petitioner, by his counsel, was allowed a number of exceptions to the rulings of the court during the trial as to the admissibility of evidence and the instructions by the court to the jury. Upon a bill of exceptions, duly allowed and signed by said court, the petitioner duly appealed from the judgment inflicting said sentence to the Court of Appeals of the District of Columbia, which said last-mentioned court, on the 10th day

of May, 1907, affirmed the judgment of the Supreme Court of the District of Columbia by a majority vote, the Chief Justice of said Court of Appeals dissenting and filing a separate opinion favoring setting aside the judgment and sentence and remanding the case to the Supreme Court of the District of Columbia for a new trial.

5. On the 15th day of May, 1907, the petitioner filed in said Court of Appeals a motion for a rehearing, which motion by a majority vote of said court was overruled on the 16th day of May, 1907, the Chief Justice again dissenting.

6. Your petitioner is advised that said judgment of the Court of Appeals is erroneous in the following, among other, particulars:

A. In holding that the defendant's challenge for cause at the trial to juror John C. Haley was properly overruled by the trial court, said John C. Haley at the time of said challenge and while he served on the jury which convicted the petitioner being in the employ of the Post-Office Department of the United States (77).

B. In holding that several rulings of the trial court were not erroneous, which related to evidence concerning the taking by the petitioner from the office of the Fabrikoid Company, in the city of Newburgh, in the State of New York, a letter from the petitioner to said company, dated April 8, 1902, said rulings being more particularly set forth in the brief in support of this petition filed herewith (195, 196, 197, 199).

C. In holding that the first count of said indictment No. 24,688 (25-35) is a good count and in not holding that it charges no offense known to law (68, 70, 203, 204).

D. In holding that the trial court did not err in refusing to allow the petitioner to give to the jury a letter, dated December 8, 1903, from his counsel to one John Aspinwall, the president of said Fabrikoid Company, said letter being

a reply written by the authority of the petitioner to a letter to the petitioner put in evidence by the Government (192, 193, 105).

E. In refusing to allow the defendant, as a witness in his own behalf, to tell the jury why he did not give or exhibit to one Spencer Trask the books showing the accounts and business of the Postal Device and Lock Company (163, 164), Trask having testified as a witness for the Government that he demanded said books and papers, and that the petitioner had refused to surrender them.

F. In holding that the trial court did not err in refusing to allow the petitioner to put in evidence certain entries in an account book kept by the petitioner for the purpose of showing by the entries in said account book that the petitioner had informed the president of the Postal Device and Lock Company that petitioner had received certain sums of money from his codefendant, George E. Lorenz, the Government having given evidence to the jury tending to show that the petitioner had concealed from said company the fact that he had received such payments from said Lorenz (170).

G. In holding that the trial court did not err in refusing to allow the petitioner to introduce certain evidence tending to show that the petitioner in good faith intended to furnish shoulder-straps with the satchels to be furnished under said contract, the ground of such refusal by the trial court being in substance that no bad faith was imputed to the petitioner in that connection; and in refusing at the same time to instruct the jury, at the request of the petitioner, that the fact that shoulder-straps were not furnished with the satchels was not to be taken by the jury as evidence of the guilt of the defendant (160, 161, 206, 207).

H. In holding that the trial court did not err in refusing to allow James K. Polk, a witness for the petitioner, on his direct examination, as a witness for the petitioner, to testify what said Lorenz, a witness for the Government in said trial, had said *in substance* to said Polk on a certain occasion, the foundation for such question to said Polk having been laid

on the cross-examination of said Lorenz, and the ruling of said court excluding such question being on the ground that the witness Polk could not be allowed to state what the witness Lorenz said *in substance*, but must state the *exact words* (150).

7. The petitioner is advised by counsel and avers that the questions involved in the decision of said Court of Appeals, as indicated above, are of great and general importance in the administration of the criminal laws of the United States; that by the ruling of said court in respect of the said juror John C. Haley the petitioner was deprived of his constitutional right to a trial by an impartial jury; and by reason of the several rulings of the trial court hereinabove referred to, taken together, the petitioner was denied a fair trial. For these reasons, which are more fully and specifically set forth in the brief of petitioner's counsel herewith submitted, your petitioner respectfully prays that a writ of certiorari issue out of and under the seal of this honorable court, directed to the Court of Appeals of the District of Columbia, requiring the said court to certify and send to this court, on a certain day to be therein designated, a full and complete transcript of the record and all proceedings in the said Court of Appeals in the said case therein entitled William Gordon Crawford, appellant, *vs.* The United States of America, to the end that the case may be reviewed and determined by this court, as provided in the act of Congress entitled "An act to establish a Code of Law for the District of Columbia," approved March 3, 1901, section 234.

And your petitioner will ever pray.

WM. GORDON CRAWFORD,
Petitioner.

A. S. WORTHINGTON,
Attorney for Petitioner.

STATE OF NEW YORK,
County of Kings, ss:

William Gordon Crawford, being duly sworn according to law, on oath says that he is the petitioner above named, and that the allegations of the foregoing petition are true as he verily believes.

WM. GORDON CRAWFORD,
Petitioner.

Subscribed and sworn to before me, this 20th day of May, A. D., 1907.

[Seal Charles F. Hickey, Notary Public, Kings County, N. Y.]

CHARLES F. HICKEY,
Notary Public, Kings Co.

Certificate filed in N. Y. Co.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 760.

WILLIAM GORDON CRAWFORD, PETITIONER,

vs.

UNITED STATES OF AMERICA, RESPONDENT.

BRIEF ON BEHALF OF PETITIONER.

Statement of Case.

This case grows out of an indictment under section 5440 of the Revised Statutes of the United States, which is as follows:

"If two or more persons conspire, either to commit any offense against the United States, or defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, all the parties to such conspiracy shall be liable to a penalty of not less than one thousand dollars, and not more than ten thousand dollars, and to imprisonment not more than two years."

This petitioner was tried alone in the Supreme Court of the District of Columbia upon three consolidated indictments, one, No. 23,865, charging him in 20 different counts

with conspiring with August W. Machen and George E. Lorenz to defraud the Government by furnishing carriers' satchels without straps and getting pay for them as with straps (Record, 11); another, No. 23,866, charging him in 4 different counts with presenting vouchers alleged to be false, in that they represented the full value of satchels with straps, when the straps had not been furnished (Record, 1); and No. 24,688, charging him in 6 counts with conspiring with Machen and Lorenz to defraud the Government by agreeing that Machen was to have part of the proceeds of a contract which was to be executed under his, Machen's, direction as an officer of the Government (25). The petitioner stands convicted under count one of indictment No. 24,688, all the other counts of the indictments having been disposed of in his favor by the rulings of the court or the verdict of the jury. The petitioner has been tried twice on these indictments. At the first trial the jury disagreed. The second trial resulted in a conviction, which has been affirmed by the Court of Appeals of the District by a divided court, Chief Justice Shepard dissenting.

The single count upon which the defendant stands convicted will be found on pages 25 to 35 of the printed record filed with the petition in this case. As will be seen below, that count charges no specific criminal or wrongful intent on the part of the defendant. In this respect it differs from all the other counts in the several indictments.

The defendant was sentenced by the trial court to two years' imprisonment in the penitentiary (10). On appeal, the Court of Appeals affirmed the judgment below by a divided court, Chief Justice Shepard dissenting. The majority opinion begins on page 269 of the record and the dissenting opinion on page 287.

Of the numerous questions presented to and considered by the Court of Appeals, but a few are referred to in the petition here and only those mentioned in the petition will be referred to in this brief.

The principal undisputed facts in the case are as follows:

By a contract dated June 25, 1902, the Postal Device and Lock Company, a New Jersey corporation, entered into a written contract with the Postmaster General for furnishing carriers' satchels for four years beginning July, 1902 (227). The petitioner, Crawford, as the managing agent of that company, took a leading part in having the contract entered into and superintended the manufacture and delivery of the satchels under the contract. August W. Machen, as the First Assistant Postmaster General under the direction of the Postmaster General, had general charge of carrying out contracts with the Post-Office Department of this kind. The other defendant, George E. Lorenz, lived in Toledo, and was an old friend of Machen's. The bids under which this contract was awarded to the Postal Service and Lock Company were filed pursuant to an agreement dated June 3, 1902, between Lorenz and that company (82), which was replaced by a later one, which will be found on page 84 of the record. So far as the questions raised by this petition are concerned, the details of these contracts are immaterial. The contract with the Post-office Department, as to three of the four classes of satchels mentioned in it, required the contractor to furnish shoulder straps with the satchels. As a matter of fact, none were furnished. There seems to be no question that Lorenz received from time to time from the Postal Device and Lock Company what purported, under the contract between him and the Postal Device and Lock Company, to be his share of the proceeds of certain payments made by the Government to that company for satchels furnished, and that a definite proportion of the payments so received by Lorenz shortly afterwards were paid over by him to Machen; and it was admitted at the trial by Crawford that on three different occasions he had received from Lorenz payments which were substantially a definite proportion of the payments so received by Lorenz. The first payment made by Lorenz to Crawford was by a draft payable to

bearer; the second one was made by money sent by express, and the third was sent by a bank draft.

The contention of the Government at the trial was that Crawford received these payments from Lorenz for his own individual benefit, in pursuance of an agreement entered into between Lorenz, Machen, and Crawford. Crawford's contention was that he had no knowledge of the payments to Machen, and that while Lorenz understood that the payments to him, Crawford, were being made for his, Crawford's, individual benefit, as a matter of fact he, Crawford, informed the Postal Device and Lock Company of the fact that he was receiving these payments, and that he intended to account to that company for all the moneys he had received and was to receive from Lorenz.

As to the failure to furnish the straps, Crawford testified that when he received from Machen the first order to furnish satchels, Machen told him that the Government would furnish the straps, because a certain patented strap, called the Lamb strap, which was not such as the Postal Device and Lock Company had agreed to furnish, was required and that at the end of each year there would be an adjustment made between the contractor and the Government by which there would be deducted from the amount due the contractor a proper proportion of the amounts which were paid under the contract for satchels with straps (158).

It is believed the foregoing is a sufficient statement of facts to enable the court to understand the importance of the rulings of the courts below which it is sought to have this court review. Those rulings will now briefly be adverted to in the order in which they are referred to in the petition for the writ of certiorari.

ARGUMENT.

I.

As to the disqualification of a juror who is in the employ of one of the parties to a trial.

John C. Haley, one of the jurors in the case, was challenged by the defendant on the ground that he was a salaried officer of the Government, after he had testified, under examination on his *voir dire,* that he was a druggist in Washington; that his drug store is a sub-postal station and he is the clerk in charge; that he is technically a clerk in the city post-office and is paid an annual compensation of $300, which includes all clerk hire and rental of the premises; that this is one of the things in connection with the drug business that can hardly be avoided; and that a drug store, to keep up its prestige in the neighborhood, must sell postage stamps and may as well get paid for it as do it for nothing (77).

This challenge was overruled and an exception allowed.

The defendant exhausted his peremptory challenges before the jury was sworn (78).

There is here raised a question of very great importance to the United States and to all persons who are liable to be brought to trial in a federal court on a criminal charge. Especially is it important in the District of Columbia, where there are so many persons who are in the employ of the United States.

So far as counsel have been able to learn, this is the first time it has ever been held that a person who is receiving a salary from the United States is competent to sit as a juror in a case to which the United States is a party, against the objection of the other party to the trial.

On this point in the case the Chief Justice of the Court of Appeals dissented from the opinion of the majority of the

court and filed a separate opinion expressing his views on this subject.

If the majority opinion on this point correctly expresses the law on the subject, an accused person brought to trial in this District upon a charge involving transactions with one of the departments of the Government in Washington may be tried by a jury composed of clerks of that department A marshal of the United States court directed to summons jurors in any of the circuit courts throughout the country may bring in the postmaster where the trial is had or his clerks, or find the requisite number of talesmen in the nearest custom-house.

If the Government has this right, it is all important that it should be established by the decision of this tribunal, so that it may be known throughout the length and breadth of the land. If it is not the law, then it is equally important that it should be so declared here; for unless this court shall interfere in this case, from this time on, under the decision now under consideration, every person accused of crime in this District may find his life and liberty dependent upon the verdict of a jury composed in whole or in part of those who receive their daily bread from the other party to the case.

All the books on the common law dealing with the subject of the qualifications of jurors lay it down as accepted and unquestioned law that it is ground for challenge for cause by a party to a suit that the juror is in the employ of the other party. In 3 Blackstone Comm., 363, it is said:

"A principal challenge is such where the cause assigned carries with it *prima facie* evident marks of suspicion, either of malice or favor, as * * * that he is the party's master, servant, counsellor, steward, or attorney * * * all these are principal causes of challenge; which if true cannot be overruled, for jurors must be *omnia exceptione majores.*"

In 1 Chitty, Crim. Law, 541, 542, and 1 Bishop, New Crim. Procedure, section 902, it is said that if a juror be under the power of either party, or in his employment, he is incompetent.

At common law, as we all know, it is ground of challenge for cause of a juror that he is related to the other party within the ninth degree, although the relationship is one by marriage (1 Chitty, Crim. Law, 541; 1 Bishop, New Criminal Procedure, sec. 901).

Mr. Bishop cites in this connection the North Carolina case of State *vs.* Berry, Busbee, 330, in which it was held that a challenge to a juror was properly sustained because the great-grandmother of the juror was the sister of the grandmother of the defendant.

In Mitchell *vs.* R. R. Co., 63 Ga., 173, the trial court sustained a challenge by the plaintiff to one of the jurors on the ground that he was an employee of the defendant company. On appeal it was held that this was correct, the court saying:

"The power of employer over employee is that of him who clothes and feeds over him who is fed and clothed. Hence the common law excluded all servants, and our statutes have nowhere altered the rule, and it should not be altered. A close relative is a less dangerous juror, if not a dependent kinsman, than one who is dependent upon his employer."

In Hubbard *vs.* Rutledge, 57 Miss., 6, there had been a verdict for the defendant. During the organization of the jury the plaintiff challenged for cause a juror named Berry because he was a clerk of the defendant. The challenge was overruled; whereupon the plaintiff challenged the juror peremptorily. All the peremptory challenges were exhausted before the panel was completed. The supreme court of the State reversed the action of the trial court because of the action of the court in holding Berry to be competent to sit as a juror in the case.

In Louisville, &c., R. Co. *vs.* Mask, 64 Miss., 738, the trial court had sustained a challenge for cause on the ground that the juror challenged was in the employ of the defendant railroad company. This ruling the Supreme Court of Mississippi sustained, saying:

"It does not matter that he had the self-confidence to swear that he could try the case impartially."

It is not deemed necessary now to go more fully into the authorities on this subject.

It seems manifest that a question of such importance, arising, as it may, in almost every criminal case of consequence in this District, and likely to arise in every federal court, should be passed upon by this court.

II.

As to the ruling that after the Government has offered evidence tending to show that the defendant has endeavored to suppress material evidence against him, it is not competent for the defendant to show that in what he did he was attempting to preserve the evidence and not to suppress it.

On this point, too, the Chief Justice of the Court of Appeals dissented. In the separate opinion filed by him he considers this proposition at considerable length.

As has been seen, a contract in writing between the Postal Device and Lock Company and George E. Lorenz was entered into in Washington in the early part of June, 1902 (82). Lorenz, as a witness for the Government, testified that he came to Washington at that time on a summons from Machen, and found this contract all prepared and ready for execution (122). Crawford testified, on the contrary, that Lorenz came to see him in Washington in April, 1902, and that the contract in question was then substantially agreed upon, between Lorenz on the one hand and Crawford,

acting for the Postal Device and Lock Company, on the other (154-156). By a letter dated April 18, 1902, Crawford inquired of the New York Leather and Paint Company (afterwards called the Fabrikoid Company) whether Lorenz had called on that company on the 17th, 18th, or 19th day of April (101). Lorenz was in Washington on the 16th, 17th, and 18th days of April, 1902, as shown by the books of the Raleigh Hotel, where he stopped (146). If Crawford saw Lorenz in Washington in that month of April, it was during those three days. At the trial it was claimed by the Government that this letter to the New York Leather and Paint Company showed that Crawford could not have been in conference with Lorenz on the days he claimed to have met him, because this letter showed that on those days Crawford thought that Lorenz was in Newburgh, New York.

The Government proved by Aspinwall, the president of the New York Leather and Paint Company, that in December, 1903, Crawford came to Newburgh and obtained leave to examine the correspondence in Aspinwall's office between Crawford and Aspinwall's Company, and that he took away surreptitiously his letter to the New York Leather and Paint Company of April 18, 1902, and that he also took from the letter-press book of that company the reply to his letter, and erased in the index of the letter-press book the figures referring to the abstracted page (100).

As a witness in his own behalf, Crawford offered to testify that when he took these letters from Aspinwall's office he took them with the intention of having them used at the trial as evidence in his behalf; but the trial court, on objection by the district attorney, ruled that Crawford could not say why he took the letters in question, or whether at the time he took them he had any intention of destroying them, or what he did with them after he had taken them (195, 196, 197).

All the judges of the Court of Appeals agreed that in these rulings the court below erred. But in the majority opinion

it is said that no harm was done—that there was nothing in Crawford's letter of April 18, 1902, that tended to prove that he had been connected with the conspiracy charged in the indictment.

It has been shown above that that letter could be used—as in fact it was used—by counsel for the Government as tending to show that Crawford's testimony in regard to his conference with Lorenz in April, 1902, was not true. It needs no argument to show that if the jury believed that he testified falsely on this subject, and that Lorenz's statement as to their first meeting being in June was true, they would have no difficulty in believing that Crawford had conspired, as testified to by Lorenz, and that his denial of the conspiracy was false also. Indeed, the most vital question of fact in the whole case was whether the relations between Lorenz and Crawford began by Lorenz seeking Crawford in April, or by Machen summoning Lorenz to Washington in June to meet Crawford.

Besides, and in addition to what is said upon this subject by Chief Justice Shepard in his dissenting opinion, it is submitted that it is impossible to reach the conclusion that no harm was done by these rulings on the record before the Court of Appeals, because that record did not contain all the evidence in the case.

Paragraph 4 of Rule V of the Court of Appeals is as follows:

"Bills of exception shall be so prepared as only to present to the appellate court the ruling or rulings of the court below upon some matter of law and shall contain only such statement of facts as may be necessary to explain the bearing of the rulings upon the issues or questions involved, and if the facts are undisputed, they shall be stated as facts, and not the evidence from which the facts are or may be deduced; and if disputed it shall be sufficient to state that evidence was adduced tending to prove them, instead of setting out the evidence in detail; but if a defect of proof be the ground of the ruling or exception, then the particulars in

which the proof is supposed to be defective shall be briefly stated, and the substance of all the evidence offered in anywise connected with and having relation to the proposition or propositions in respect to which the proof is supposed to be defective shall be set out in the bill of exception in a narrative form, as far as practicable; and where the exception is taken to the charge of the court, the exception shall specify particularly the matter or proposition of law to which the exception is intended to apply. All the exceptions taken during a trial shall be included in a single bill of exceptions, if that be practicable."

Conforming to this rule, it is stated in the bill of exceptions at the close of that part of it which relates to the evidence in the case that—

"This was all the evidence in the case *necessary to explain the bearing of the rulings of the court* at the trial upon the issues or questions involved" (199).

The Court of Appeals having thus required parties to cases in the Supreme Court of the District to include in their bill of exceptions only so much of the evidence as will enable the Court of Appeals to determine whether the rulings at the trial were correct or not, it is not competent for that court, in considering rulings appearing in a bill of exceptions so prepared, to say that the ruling, although erroneous, could have done no harm; for clearly no one can say whether a certain ruling was injurious to a party or not, without having before him *the substance of all the evidence in the case.*

But if it was not error to exclude Crawford's explanation of the taking of the letters from Aspinwall's office, it was clearly error, after his explanation has been excluded, to refuse to strike out Aspinwall's testimony.

At the conclusion of the whole testimony, the defendant's attorney moved to strike out Aspinwall's testimony relating to the taking of these letters, on the ground that "the defendant's counsel understood it was offered for the purpose of showing an attempt on the part of the defendant to suppress

testimony, and that as the court had excluded the evidence of the defendant tending to show that he took the letters for the purpose of preserving them as testimony, there was no part which Aspinwall's testimony could play in the case" (199). But the court refused to exclude the evidence, laboring, apparently, under the notion that the evidence had been first offered on the cross-examination of the defendant himself (199), when, as a matter of fact, it had been offered as a part of the Government's case-in-chief, before the defendant had had any opportunity to be heard at all (101).

It is respectfully submitted that unless the rule of evidence thus laid down shall be modified by this court, great injustice is likely to result in the future in the trial of criminal cases in this district.

III.

As to the refusal of the court to allow the defendant to give in evidence to the jury the letter of December 8, 1903, from his counsel to Aspinwall.

Immediately after Crawford took from Aspinwall's office the letters above referred to, Aspinwall, in Newburgh, New York, wrote to Crawford in Washington, charging him with having taken away the letters without leave (102, 103). This letter was put in evidence by the Government, as a part of its case-in-chief, without objection by the defendant's counsel. On the day that this letter was received, Crawford, in Washington, through his attorney, wrote and sent to Aspinwall a reply, in which it was stated in effect that Crawford understood that Aspinwall gave his consent to the taking away of the letters (105); but the court refused to allow this reply to go to the jury (106, 192, 193), the reason given by the trial judge being, because the defendant did not deny the charge himself, "but got somebody else to do it for him." And the court refused to strike out the letter from

Aspinwall to Crawford charging him with improperly taking the letters (102).

In the prevailing opinion of the Court of Appeals it is said:

"It is difficult to understand the theory upon which the letter from Aspinwall to defendant, charging the latter with taking the letters and making the erasure in the index, was admissible. But it was admitted without objection, and the subsequent motion to strike it out was addressed to the discretion of the trial court."

Without entering into an elaborate discussion at this time of this ruling, it would seem to be sufficient for the present purpose to refer to the case in this court of Stringer *vs.* Young's lessee, 3 Peters, 320, 337, in which case Chief Justice Marshall, speaking for the entire court, said:

"The testimony offered by the defendants was unquestionably irrelevant. Entries made subsequent to the plaintiff's grant, whatever might be the impression under which they were made, could not possibly affect the title, and were, therefore, clearly inadmissible. This principle has never been controverted; but the plaintiffs in error insist that they had a right to introduce this testimony, in order to rebut other equally irrelevant testimony, which had been offered by the plaintiffs in ejectment. This testimony was the recent entries made by Stringer and the witness, who proved that, at the time of making them, he had no notice of the plaintiff's claim. This testimony was undoubtedly irrelevant, and, had it been opposed, could not have been properly admitted. *Had the defendant moved the court to instruct the jury that it must be utterly disregarded, that it must not be considered by them as testimony, and this instruction had been refused, the refusal to give it would have been error.* The defendant, however, has not taken this course, but has chosen to repel the testimony by other evidence, which was clearly [illegible]dmissible. Whether a case may exist in which improp[illegible]estimony may be calculated to make such an impression on the jury that no instruction given by the judge can efface it, and whether, in such a case, testimony not otherwise admissible may be introduced, which

is strictly and directly calculated to disprove it, are questions on which this court does not mean to indicate any opinion."

IV.

As to the construction given by the courts below to the words "with intent to defraud the United States," in section 5440.

As to indictment No. 24,688, the defendant was tried upon the first, fifth, and sixth counts, the other counts of that indictment having been held bad on demurrer (70). The fifth and sixth counts distinctly charged that Machen was to receive a part of the proceeds of the satchel contract in question in consideration of his rendering services in his official capacity in aid of the alleged conspiracy (51-67). Thus in the fifth count it is said that Machen should

"by and through advice to be given and recommendation to be given in that behalf * * * procure and be instrumental in procuring the said bid * * * and should in like manner as such general superintendent secure and be instrumental in securing the award by the said Post-Office Department to the said Postal Device and Lock Company of the said contract * * * and should * * * be instrumental in securing the purchase by the said Post-Office Department of large numbers of said satchels * * * and should * * * procure and be instrumental in securing the approval and payment of such bills as the said Postal Device and Lock Company might and should render"

Similar allegations are found in the sixth count (62). These two counts the Government abandoned at the trial, agreeing that a verdict of not guilty should be rendered as to them (199, 200). The first count, upon which alone the defendant stands convicted, carefully omits the above charges contained in the fifth and sixth counts. That count will be found on pages 25 to 35 of the record, the charging part beginning at the foot of page 31. All that is averred in that

count in this regard is that Machen was to receive a part of the money which was to go to Lorenz under the contract between the latter and the Postal Device and Lock Company (32, 33).

A demurrer to this count was overruled (70).

Section 1533 of the District Code provides as follows:

"In all cases, civil and criminal, in which any or either party shall demur to any indictment, declaration or other pleading of the adverse party, and said demurrer shall be overruled, the party demurring shall have the right to plead over, by traverse or otherwise, without waiving his said demurrer; and upon appeal shall have the right to insist upon his demurrer and have the benefit thereof as fully as if he had not pleaded over."

The same point practically was raised by an exception to the first instruction on behalf of the Government given to the jury (203), and also by the refusal of the court to instruct the jury, as to that count, to render a verdict for the defendant (203).

Both the trial court and the majority of the Court of Appeals held that this count is good under section 5440, on the ground that within the meaning of that section the United States is defrauded when one of its officials has an interest in a contract which is to be carried out on the part of the Government under his supervision, even though there be no intent on his part or on the part of those through whom he derives his interest in the contract that he shall be corrupted or in anywise influenced in the performance of his duties as an officer of the Government.

There are a number of sections of the Revised Statutes which provide for the punishment of those who receive or give bribes. (See sections 1781, 1782, 5449, 5450, 5451, 5499, 5500, and 5501. They are printed in full as an appendix to this brief.) In all of them it is an essential part of the offense that the money shall be paid or received

with intent to influence the person bribed in the performance of his official duties.

Four other sections of the Revised Statutes (3739, 3740, 3741, and 3742), which are also included in the appendix hereto, prohibit *any member of, or delegate to, Congress* from becoming interested in any contract with the United States, and require that in every such contract there shall be inserted an express condition that no member of, or delegate to, Congress shall be admitted to any share or part thereof, or to any benefit to arise therefrom. There is no statute which makes it an offense for any officer of the Government, except a member of Congress, to have an interest in a Government contract; nor is there any statute which punishes either the person or the official who is given an interest in a public contract, with the carrying out of which he is connected officially, when such gift is neither given nor received with any wrongful intention in the mind of any party to the transaction.

It was for this reason, doubtless, that in the count of indictment No. 24,688 upon which the defendant stands convicted he was charged with conspiring with Machen and Lorenz not to commit any offense against the United States, but to defraud the United States. Clearly he could not be convicted of conspiring to commit an offense against the United States, because for the commission of the offense of bribery intent is absolutely essential.

But the question arises whether that part of section 5440 which refers to conspiracies to "defraud the United States" can be strained to apply to a case where an official without wrongful intention is found in a position where his personal interest is in conflict with his duty to the Government. If the phrase "to defraud the United States" can be given such a broad application, then those words are of such indefinite significance that it is impossible for any one to know in advance of judicial determination to what they may extend.

In Todd *vs.* United States, 158 U. S., 278, 282, this court, speaking through Mr. Justice Brewer, said:

"It is axiomatic that statutes creating and defining crimes cannot be extended by intendment, and that no act, however wrongful, can be punished under such a statute unless clearly within its terms."

So in United States *vs.* Brewer, 139 U. S., 278, 288, it is said:

"Laws which create crime ought to be so explicit that all men subject to their penalties may know what acts it is their duty to avoid."

On the other hand, if the phrase "to defraud the United States" is to receive the construction given to it by the courts below, then those words are practically synonomous with the expression "to injure the United States." And in that case section 5440 is altogether void because of its indefiniteness. This is illustrated by the case of Czarra *vs.* United States, 25 App. D. C., 443, citing U. S. *vs.* Reese, 92 U. S., 217. To the same effect is James *vs.* Bowman, 190 U. S., 141.

Taking into consideration these well-established principles and the cases cited in the Court of Appeals decision in this case, in which the phrase "to defraud" has been applied to cases in which there was no pecuniary injury contemplated and no property rights invaded, it is time that the public should be advised by the court of last resort whether there is a statute in force in this country which makes it a penitentiary offense to agree to do anything which though not punishable at all when done may be deemed to be against good morals, or be in some way injurious to the public interests.

V.

As to the exclusion from the jury of the entries in the defendant's account book relating to money transactions.

Lorenz testified on behalf of the Government that he had made certain payments to Crawford out of the moneys which he, Lorenz, received from the Postal Device and Lock Company. Trask, who employed Crawford as the manager of the Postal Device and Lock Company and who absolutely owned and controlled that company, testified that he had never been informed that these payments were being made by Lorenz to Crawford (115, 116). Crawford, it will be remembered, testified that while Lorenz understood that he, Crawford, was receiving these payments on his own account, he in fact intended to account to his company for them. Obviously, anything that tended to keep from the jury competent evidence that Crawford's statement in this regard was true was to cut out the very heart of his defense. It was proved, and not disputed, that he kept in a book an account of the moneys which he received on account of his company and how these sums were expended, and that from time to time he submitted this book, with his vouchers for expenditures, to Chance, who was Trask's private secretary and was also the president of the company. Chance would retain the book and vouchers for a while and then return them to Crawford, after checking the different items in the book to show that he had compared such items with the vouchers submitted (168, 169).

In the account book so kept by Crawford, which covered the year 1902, there were references to two payments made by the Postal Device and Lock Company to Lorenz during that year. One of these items (259) reads: "Paid Lorenz less expenses trips May 10-17 to Oct. 15, $508.65—$5441.35." The other item referred to (260) shows a payment to Lorenz of $992.90, as follows: "Paid Geo. E. Lorenz trips 10/15 to 11/23, $992.90." In the margin opposite the

first entry is the memorandum: "Paid W. G. C. 25%." In the margin, opposite the payment of $992.90, is also the marginal entry of "Paid W. G. C. 25%." (See fifth line from top of page 260; also note at bottom of that page.)

The relation of these marginal memoranda to the entries does not clearly appear in the printed record, but it clearly appears in the book itself, which it is required by the bill of exceptions shall be submitted to the appellate court (171).

The reason given by the trial court for excluding these entries from the jury was on account of the condition of the book (170). It would seem that nothing could be clearer than that if there was anything suspicious about the book, it went to the weight of the evidence and not to its admissibility. If a formal letter to Chance written by Crawford, informing him that Lorenz was remitting these payments to him, Crawford, had been produced, nobody could question the right of the defendant to have that letter put in evidence. And it would seem that if he testified that he gave to the president of his company the information by any kind of communication or memorandum, he had an absolute right to have that communication or memorandum submitted to the jury in order that they might give it such weight as they deemed it entitled to.

In the majority opinion of the Court of Appeals no reference is made to the reason given by the trial judge for excluding this evidence. In that opinion the question is dismissed by a simple reference to the case of Gurley *vs.* McLennan, 17 App. D. C., 170. In that case all that was decided was that a memorandum made by one party to a transaction was not evidence against the other party of the truth of what was stated in the memorandum. But here the Government had already proved, and relied upon, the fact stated in the memoranda referred to. Its principal piece of evidence against Crawford was that he *did* receive back from Lorenz 25 per cent. of the moneys received by Lorenz. The only object in offering the book entries was to prove that that

undisputed fact was communicated to the person to whom the book was delivered.

VI.

As to the exclusion from the jury of Crawford's explanation of his refusal to give up the books and papers of the Postal Device and Lock Company to Spencer Trask on the latter's demand.

As a witness for the Government, Trask testified that after the Post-Office troubles began he from time to time requested Crawford to give him the books and papers belonging to the Postal Device and Lock Company—"the books that the Government wanted"—but that he never got them (117).

When Crawford was on the stand as a witness in his own behalf, he admitted that Trask had asked him to produce the books which he had, and that he did not give them to him. He was then asked why he did not give them to him (163). This question being objected to, Crawford's counsel stated to the court that prior to these demands by Trask, Crawford, through his counsel, had offered to go to the District attorney's office alone, without his counsel, whenever wanted, and to produce the books and papers which belonged to the Postal Device and Lock Company, and to answer any questions that the District attorney might ask him in regard to the business of that company, and especially any questions in relation to the alleged fraudulent contract with the Government of June 25, 1902; that the District attorney had not asked to see the witness's books, and that after that he was instructed by his counsel not to allow anybody but his counsel to see any of his books or papers (163, 164). But the court ruled that all this evidence was incompetent, except the mere advice given to the defendant by his counsel not to give the books and papers to any one but his counsel, and as this alone would have done him no good, it was not offered.

There is thus presented in this case this remarkable situation: The Government offers evidence against a defendant in a criminal case tending to show that he had tried to keep from the Government certain evidence in his possession, and he is not allowed to show in his own defense that through his counsel he had gone to the proper representative of the Government in the prosecution and offered to surrender those very books and papers to him and answer any questions that might be asked him in regard to them.

VII.

As to the exclusion of evidence tending to show the defendant's good faith in the matter of the shoulder-straps and the refusal of the court to instruct the jury that the fact that shoulder-straps were not furnished was not to be considered as evidence tending to show his guilt.

In each of the twenty counts of indictment No. 23,865 Crawford was charged with conspiring to defraud the Government by getting payment for satchels with shoulder-straps without delivering the shoulder-straps (11, 124). In each of the four counts of indictment No. 23,866 he was charged with having presented for payment vouchers for satchels with shoulder-straps, which vouchers were alleged to be false in that the straps had not been furnished (1, 46). In indictment No. 24,688, upon the first count of which alone the defendant stands convicted, no reference is made to the shoulder-strap matter (25-67).

As a part of its case-in-chief, the Government proved at the trial that the shoulder-straps were all furnished by the Government, being purchased from a man named Lamb by the Government (92, 93).

As a witness in his own behalf, Crawford testified that he had intended to furnish the straps with the satchels until he was informed by Machen, after the contract with the Gov-

ernment had been entered into, that the Government would furnish the Lamb strap and make an adjustment accordingly with the Postal Device and Lock Company at the end of each year (158).

As corroborative evidence of his good faith in the matter of the shoulder-straps, Crawford offered to put in evidence some thirty letters, being correspondence with a number of firms prior to the date of the Government contract, which correspondence showed the efforts of Crawford, acting on behalf of his company, to get bids from the persons with whom he was corresponding for satchels and shoulder-straps (160). This evidence was excluded by the trial court, the court stating the ground of the ruling as follows:

"If the *bona fides* of the contract with the Government were involved, or if the question of the good faith of the defendant with respect to the quality of the material used in fulfilling the contract were involved, I should see some relevancy to these letters; *but the only fraud claimed, as I recall, is that the agreement was to vest a Government officer with an interest in the proceeds of a valid contract*" (161).

In the majority opinion of the Court of Appeals on this subject it is said:

"There was no contention by the Government that the contract between the Government and the Postal Device and Lock Company was fraudulent in respect of the materials furnished, or in any other respect than an unlawful division of the profits accruing therefrom."

Yet in the same majority opinion the action of the trial court is sustained in refusing to give to the jury the following instruction:

"The jury are instructed that if they find from the evidence that when the contract of June 25th, 1902, between the United States and the Postal Device and Lock Company, in evidence, was entered into, the defendant, Crawford, in good faith, expected and intended that the Postal Device and

Lock Company should furnish shoulder-straps with the satchels of Class 'A' and Class 'C' referred to in said contract; that afterwards August W. Machen, Superintendent of general delivery in the Post-Office Department, in his official capacity, and of his own motion, directed that the shoulder-strap known as the 'Lamb Strap' should be used with satchels delivered under said contract; that it was impossible for the Postal Device and Lock Company or said Crawford as its general manager to obtain said straps; that the Lamb strap was accordingly furnished by the Government with the understanding on the part of said Crawford as the representative of said company, that at the end of each fiscal year, a reasonable and proper deduction should be made from the amounts payable to said company under said contract on account of its not furnishing shoulder-straps for satchels of Class A and Class C as required by the terms of said contract; and that in this regard said Crawford acted in good faith, and without any intent to inflict any pecuniary loss upon the Government, or to defraud it in any way, then the jury is instructed that as to indictment No. 24,688 they are not to consider the fact the shoulder-straps were not furnished with the satchels as evidence of the guilt of the defendant Crawford."

The reason given for upholding the trial court in refusing this instruction is that conspirators are bound by the overt acts of one another done in pursuance of the conspiracy. Very true; but the question here was whether Crawford was one of the conspirators. Surely an act done by him in good faith and not in pursuance of any unlawful agreement could not be used as evidence against him to show that he was a conspirator because as to that act another party was acting in bad faith.

If, as the trial court stated, in excluding this evidence the Government was making no claim against Crawford, except that he had committed the technical offense of agreeing that Machen should have an interest in the contract between the Government and the Postal Device and Lock Company, how could he possibly be affected by the fact that

Machen, on his own motion and without collusion with the defendant, purchased the Lamb strap for the satchels instead of requiring the company to furnish them?

VIII.

As to the ruling that a conversation may be proved only by a witness who will swear to the exact words used.

On the cross-examination of the witness for the Government, George E. Lorenz, he was asked whether at a certain time and place he had not said to one James K. Polk that it would be well for Crawford to testify at the trial that a certain sum of $1,465 and some cents was sent back to him as a repayment for the straps—as a payment on account of the straps for those five thousand bags—and he answered that he did not make that statement (143).

Polk was called as a witness on behalf of the defendant and was asked whether at the time and place referred to Lorenz had said to him in substance that it would be well for Crawford to testify at the trial that the $1,465 and some cents was sent back to him as a repayment for the straps—as a payment on account of the straps for those five thousand bags (150). To this question counsel for the Government objected. The defendant's counsel stated that he expected the witness to answer the question in the affirmative. But the court sustained the objection on the ground that the words "in substance" should not be used, *but that counsel should put the exact words in the witness' mouth.* Thereupon counsel for the defendant asked the witness the same question, omitting the words "in substance," and he very naturally and truthfully replied that he could not say whether Lorenz said those exact words or not (150).

The majority opinion of the Court of Appeals does not sustain this ruling on the ground that a contradicting witness must give the exact words of a conversation; but in that

opinion it is held, first, that the witness Lorenz in the course of his testimony made a statement which amounted to an admission of the fact that was sought to be proved by Polk, and, secondly, that the question asked Lorenz related to a collateral matter, and that therefore the defendant was bound by Lorenz's answer and could not contradict it.

The object of the testimony so ruled out seems to have been entirely overlooked by the Court of Appeals. The real purpose was to show that Lorenz sought through Polk to get Crawford to agree that at the trial he would swear to a lie to save them both, and that finding that Crawford was going to tell the truth, he, Lorenz, then went to the District attorney and concocted a series of falsehoods by which he sought to have Crawford convicted and to save himself from punishment under these three indictments—an object which he has so far succeeded in accomplishing in both its aspects.

The testimony of Lorenz relied upon by the Court of Appeals in this connection does not go to the point of his suggestion that Crawford should agree to lie about this matter at their approaching trial. He says he suggested a coincidence in certain figures, but does not say that he intimated that Crawford should testify falsely in that regard.

As to this being a collateral matter, it seems clear enough that it went to the bias of the witness Lorenz, and the bias of a witness is never a collateral matter, and may be proved without asking him any questions on the subject. It may be, as stated in the opinion of the Court of Appeals, that the suggestion that Crawford should tell a falsehood about the reason why this $1,465 was sent to him would appear on its face to indicate a friendly feeling on his part toward Crawford; but, when taken in connection with the fact that Crawford did not so testify, and that Lorenz himself testified against him, it went far toward accounting for Lorenz's hostility to Crawford. And it becomes a very important question whether when one of two parties jointly accused of crime endeavors through a third person to get the

other to agree upon perjured testimony to be given at their trial, that one of the two defendants who insists that the truth shall be told is to be precluded from proving as against the other, who takes the stand as a witness for the Government, the fact that such a proposition was made and rejected.

That if the conversation is competent it is not necessary that the third person to whom the proposition was made should be bound to remember the exact words in which the suggestion was made would seem to require no argument.

Without enlarging upon the questions above referred to, it is respectfully submitted that they are of such importance and novelty as to justify their consideration and determination by this court.

A. S. WORTHINGTON,
Attorney for Petitioner.

APPENDIX.

SECTION 1781. Every member of Congress or any officer or agent of the Government, who, directly or indirectly, takes, receives, or agrees to receive, any money, property, or other valuable consideration whatever from any person for procuring or aiding to procure any contract, office or place from the Government or any department thereof, or from any officer of the United States, for any person whatever, or for giving any such contract, office or place to any person whomsoever, and every person who, directly or indirectly, offers or agrees to give, or gives, or bestows any money, property, or other valuable consideration whatever for the procuring or aiding to procure any such contract, office, or place, and every member of Congress who, directly or indirectly takes, receives or agrees to receive any money, property, or other valuable consideration whatever after his election as such member, for his attention to, services, action, vote, or decision on any question, matter, cause, or proceeding which may then be pending, or may by law or under the Constitution be brought before him in his official capacity or in his place as such member of Congress, shall be deemed guilty of a misdemeanor and shall be imprisoned not more than two years, and fined not more than ten thousand dollars. And any such contract or agreement may, at the option of the President, be declared absolutely null and void; and any member of Congress or officer convicted of a violation of this section, shall, moreover, be disqualified from holding any office of honor, profit or trust under the Government of the United States.

SECTION 1782. No Senator, Representative, or Delegate, after his election, and during his continuance in office, and no head of a department or other officer or clerk in the employ of the Government shall receive or agree to receive, any compensation whatever, directly or indirectly, for any services rendered or to be rendered, to any person either by himself or another, in relation to any proceeding, contract, claim, controversy, charge, accusation, arrest, or other mat-

ter or thing in which the United States is a party, or directly interested, before any department, court-martial, bureau, officer, or any civil, military or naval commission whatever. Every person offending against this section shall be deemed guilty of a misdemeanor, and shall be imprisoned not more than two years, and fined not more than ten thousand dollars, and shall, moreover, by conviction therefor, be rendered forever thereafter incapable of holding any office of honor, trust, or profit under the Government of the United States.

SECTION 5449. Every person, who, directly, or indirectly, gives any sum of money, or other bribe, present or reward, or any promise, contract, obligation or security for the payment or delivery of any money, present, or reward, or any other thing of value to obtain or procure the opinion, judgment or decree of any judge of the United States, in any suit, controversy, matter or cause depending before him, shall be fined and imprisoned at the discretion of the court and shall forever be disqualified to hold any office of honor, trust, or profit under the United States. (See Sec. 5499.)

SECTION 5450. Every person who promises, offers, gives, or causes or procures to be promised, offered or given, any money or other thing of value, or makes or tenders any contract, undertaking, obligation, gratuity or security for the payment of money or for the delivery or conveyance of anything of value to any member of either house of Congress, either before or after such member has been qualified or has taken his seat, with intent to influence his vote or decision on any question, matter, cause or proceeding which may be at any time pending in either House of Congress or before any committee thereof, shall be fined not more than three times the amount of money or value of the thing so offered, promised, given, made or tendered, or caused or procured to be so offered, promised, given, made or tendered, and shall be, moreover, imprisoned not more than three years.

SECTION 5451. Every person who promises, offers or gives, or causes or procures to be promised, offered, or given, any money or anything of value, with intent to have his decision or action on any question matter, cause, or proceeding which may, at any time be pending, or which may be, by law brought before him in his official capacity, or in his place of trust or profit, influenced thereby, shall be punished as prescribed in the preceding section.

SECTION 5499. Every judge of the United States, who in any wise accepts, or receives any sum of money, or other bribe, present or reward, or any promise, contract, obligation, gift, or security for the payment of money or the delivery or conveyance of anything of value, with the intent to be influenced thereby in any opinion, judgment, or decree in any suit, controversy, matter or cause depending before him shall be fined and imprisoned at the discretion of the court and shall be forever disqualified to hold any office of honor, trust or profit under the United States.

SECTION 5500. Any member of either house of Congress who asks accepts or receives any money, or any promise, contract, undertaking, obligation, gratuity or security for the payment of money or for the delivery or conveyance of anything of value either before or after he has been qualified or has taken his seat as such member with intent to have his vote or decision on any question, matter, cause or proceding which may be at any time pending in either house, or before any committee thereof, influenced thereby, shall be punished by a fine of not more than three times the amount asked, accepted or received, and by imprisonment not more than three years.

SECTION 5501. Every officer of the United States and every person acting for or on behalf of the United States, in any official capacity under or by virtue of the authority of any department or office of the Government thereof; and every officer or person acting for or on behalf of either house of Congress, or any committee of either house, or of both houses thereof, who asks, accepts or receives any money or any contract, promise, obligation, undertaking, gratuity or security for the payment of money or for the delivery or conveyance of other thing of value, or makes or tenders any contract, undertaking, obligation, gratuity or security for the payment of money or for the delivery or conveyance of anything of value, to any officer of the United States, or to any person acting for or on behalf of the United States in any official function, under or by authority of any department or office of the Government thereof or to any officer or person acting for or on behalf of either house of Congress, or of any committee of either house, or both houses thereof, with intent to influence his decision or action on any question, matter, cause, or proceeding which may at

any time be pending, or which may by law be brought before him in his official capacity or in his place of trust or profit, or with intent to influence him to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud on the United States, or to induce him to do, or omit to do any act in violation of his lawful duty, shall be punished as prescribed in the preceding section.

SECTION 3739. No member of, or delegate to Congress shall directly or indirectly, himself, or by any person in trust for him, or for his use or benefit, or on his account, undertake, execute, hold, or enjoy, in whole or in part any contract or agreement made or entered into in behalf of the United States, by any officer or person authorized to make contracts on behalf of the United States. Every person who violates this section shall be deemed guilty of a misdemeanor, and shall be fined three thousand dollars. All contracts or agreements made in violation of this section shall be void; and whenever any sum of money is advanced on the part of the United States, in consideration of any such contract or agreement, it shall be forthwith repaid; and in case of refusal or delay to repay the same when demanded by the proper officer of the department under whose authority such contract or agreement shall have been made or entered into, every person so refusing or delaying, together with his surety or sureties, shall be forthwith prosecuted at law for the recovery of any such sum of money so advanced.

SECTION 3740. Nothing contained in the preceding section shall extend or be construed to extend to any contract or agreement made or entered into or accepted by any incorporated company where such contract or agreement is made for the general benefit of such incorporation or company; nor to the purchase or sale of bills of exchange or other property by any member of (or delegate to) Congress, where the same are ready for delivery and payment therefor is made at the time of making or entering into the contract or agreement.

SECTION 3741. In every such contract or agreement to be made or entered into or accepted by or on behalf of the United States, there shall be inserted an express condition that no member (or delegate to) Congress shall be admitted to any share or part of such contract or agreement or to any benefit to arise thereupon.

SECTION 3742. Every officer who, on behalf of the United States, directly or indirectly makes or enters into any contract, bargain or agreement in writing or otherwise, other that such as are hereinbefore excepted, with any member of (or delegate to) Congress, shall be deemed guilty of a misdemeanor and shall be fined three thousand dollars.

In the Supreme Court of the United States.

OCTOBER TERM, 1906.

WILLIAM GORDON CRAWFORD, petitioner, *v.* THE UNITED STATES. } No. 760.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI.

STATEMENT.

There were filed against the petitioner in the Supreme Court of the District of Columbia three separate indictments, the last one (the one here involved) being filed on April 3, 1905 (R., p. 25). To this indictment petitioner filed a demurrer (R., p. 68), which the court sustained as to counts numbered 2, 3, and 4, and overruled as to counts numbered 1, 5, and 6 (R., p. 70). After a plea of not guilty and an order consolidating the several indictments, the case came on for trial, and on December 19, 1905, a verdict was returned of guilty as indicted on the first count of the indictment and not guilty on the fifth and sixth counts (R., p. 8). On December 30, 1905, the peti-

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tioner was sentenced to the penitentiary (as designated by the Attorney-General of the United States), there to be imprisoned and kept at labor for a period of two years, to take effect from and including the date of his arrival at said penitentiary. He appealed to the Court of Appeals of the District of Columbia, which court affirmed the sentence on the 10th day of May, 1907, Chief Justice Shepard dissenting. A petition for a rehearing was filed and overruled. He has now filed a petition for a writ of certiorari praying this court to review the decision of the Court of Appeals of the District of Columbia.

ARGUMENT.

I.

The power of this court to issue its writ of certiorari to the Court of Appeals of the District of Columbia is found in section 234 of the District of Columbia Code (31 Stat., 1189, 1227), which reads as follows:

> In any case heretofore made final in the Court of Appeals it shall be competent for the Supreme Court of the United States to require, by certiorari or otherwise, any such case to be certified to said Supreme Court for its review and determination, with the same power and authority in the case as if it had been carried by appeal or writ of error to said Supreme Court.

In the cases of *Forsyth* v. *Hammond* (166 U. S., 506), *Lau Ow Bew, petitioner* (141 U. S., 583; 144 U. S., 47, 58), and *In re Woods* (143 U. S., 202), this court held

that as the Circuit Courts of Appeals (and the same rule applies to the Court of Appeals of the District of Columbia) were established for the purpose of relieving it of the oppressive burden of general litigation, there must be something out of the ordinary in a case before it will grant the writ of certiorari. For the purpose of securing uniformity of decision and obviating any injurious results that might follow if an absolute finality of determination were given to the Circuit Courts of Appeals, the right to review by certiorari was reserved. In the cases cited it was held that the power is one which should be sparingly exercised, and only when the circumstances of the case satisfy the court that the importance of the questions involved, the necessity of avoiding conflict between two or more Courts of Appeals, or between Federal and State courts, or some matter affecting the interests of the nation, in its internal or external relations, demand such exercise.

In the case of *Thomas M. Fields, petitioner*, v. *The United States*, decided April 8, 1907, and not yet reported, this court says:

> In this case there is no sufficient ground for a certiorari. The application comes within none of the conditions heretofore declared in the decisions of this court. However important the case may be to the applicant, the question involved is not one of gravity and general importance. There is no conflict between the decisions of State and Federal courts or between those of Federal courts of different

circuits. There is nothing affecting the relations of this nation to foreign nations, and indeed no matter of general interest to the public.

Neither the petition nor the record in this case presents any question of general importance. The defendant was indicted under section 5440 of the Revised Statutes of the United States, which section has been again and again construed by this court.

II.

The petition refers to petitioner's challenge for cause to the juror John C. Haley (R., p. 77). Haley testified that he was a druggist and had in his drug store a subpost-office station. Objection was made that he was a salaried officer of the United States, and therefore subject to challenge. The court, without dissent, held that section 217 of the Code, which refers to salaried officers of the United States, is not a positive disqualification, but permits a juror to claim his exemption, and that Haley is not disqualified under section 215 of the Code, which reads as follows:

> *Qualifications.*—No person shall be competent to act as a juror unless he be a citizen of the United States, a resident of the District of Columbia, over twenty-one and under sixty-five years of age, able to read and write and to understand the English language, and a good and lawful man, who has never been convicted of a felony or a misdemeanor involving moral turpitude.

This conclusion is sustained by the case of *United States* v. *Lee* (4 Mackey, 489, 496), decided March 15, 1886, construing a similar statute. See also *State* v. *Day* (79 Me., 120, 126); *Munroe* v. *Brigham et al.* (19 Pick., 368); *State* v. *Forshner* (43 N. H., 89, 90.)

Chief Justice Shepard, in his dissenting opinion, however, maintains that Haley was disqualified at common law. He cites no criminal case to support his contention, but refers to a class of civil cases that are well recognized. In his dissenting opinion, he says:

> It is not to be presumed that the juror would have lost his employment or privilege in the event of agreeing to a verdict unsatisfactory to those in a position to take it from him at will, or that he would necessarily have been influenced by such an apprehension.

An examination of the authorities cited will show that the common law disqualification because of interest presumed that that interest would influence the verdict and therefore made it a disqualification, so that the statement in regard to the effect of the position of Haley refutes the idea that he was disqualified at common law.

Counsel representing the petitioner stated in open court that it would be contended that this proposition, and the construction given to section 5440 R. S. (petitioner's Point IV) were matters of such gravity and general importance that they came within the rule laid down by this court as to when a certiorari would be granted. It will be seen at a

glance that neither of the propositions referred to comes within the rule. Section 5440 has been construed by this court, and neither the decision in this case, nor any decision of the Court of Appeals construing this section, is antagonistic to any decision of this court. The proposition as to the disqualification of Juror Haley raises a question of local law that has been decided in this jurisdiction for more than twenty years.

The other questions raised by the petition are objections to the exclusion of evidence. They involve no question of any general importance. The objections to the exclusion, in various forms, of Crawford's testimony in regard to taking the letters from the files of the Fabrikoid Company (Points II and III in petition for writ) raise a question as to whether or not Crawford should have been permitted to testify to an uncommunicated motive or intention, at the time that he took the letter in question into his possession, to produce the same to his counsel or the district attorney. An examination of the majority opinion and the dissenting opinion will show that every admissible fact surrounding the Aspinwall incident was admitted in evidence and the only thing that was excluded was the statement on the part of Crawford as to what he intended to do with certain papers. It is admitted by both the majority and minority opinion of the court that no act of Crawford's done after the commission of the crime mentioned in the indictment was admissible in evidence in his favor. It is submitted that if the ultimate

act is not admissible in his favor, an intention to do that act at a specific time is not admissible. All the authorities cited by the petitioner referred to the intent involved in the crime alleged in the indictment, and no case is produced or cited by the petitioner, or in the dissenting opinion of the court, that permits any uncommunicated motives or intents explaining or affecting acts collateral to the main issue. The majority of the court, in their opinion, hold that the petitioner, in his other answers, fully covered every phase of the case as made out by the Government. An examination of the statement of facts as set out in the dissenting opinion shows that the only thing Crawford was not permitted to testify to was his intention as to the ultimate disposition of the abstracted letters. He was permitted to testify fully, and did testify, in explanation of all acts done by him surrounding the taking of the letters. The majority of the court, in holding as harmless error the refusal to permit Crawford to testify as to his ultimate intention, do so upon the theory that the Aspinwall incident was offered to show merely the manner in which Crawford got the letters, not as to the intention with which he took the letters, or that he destroyed or suppressed them, the letters being in fact produced by his counsel at the trial. The only issue involved in taking the letters was whether they were surreptitiously taken or not, he admitting that he took them. The court say:

> Defendant testifying in his own behalf admitted the taking, but denied that it was

surreptitious, stating that Mr. Aspinwall put him in a room by himself with the files and said to him: "Here are the files, and here is a room for you to go in and work by yourself, *and you can have what you want.*" Defendant had already testified as to his purpose in examining the files, viz: that he had been looking over his correspondence *in order to be able to show everything*, and that he found a great many things missing, and he wanted to look over the files of the company and take what he wanted. He was also permitted to testify as to his reason for raising the index number in the letter-book, and that he did so "with the idea of putting that," *i. e.*, the letter from the company, "back and making the file perfect." It is therefore clear that the defendant was permitted to offer testimony fully meeting the Government's contention that he had taken the letters without the consent of their custodian; further, that on the subject of his intent in taking them he was permitted to offer testimony from which the only possible inference was that he desired them in order that he might show everything with reference to his transactions with the Fabrikoid Company; and that as to one letter, at least, he was permitted to testify that he took it with the intention of putting it back. To have permitted him to testify, as he offered in addition to the foregoing, that he took them with the intention of showing them to his counsel, would have added little, if anything, to his explanation; indeed, as al-

really stated, such testimony was not directly responsive to that of the Government, viz: that he had taken the letters surreptitiously. This latter allegation he was permitted to negative fully and explicitly. It is impossible to conclude that the refusal of the learned trial justice to permit him to testify more fully as to what he intended to do with the letters was prejudicial to his defense.

III.

The petition (Point IV) raises the question as to the validity of the count on which Crawford stands convicted. The Court of Appeals, without dissent, held the indictment good and decided that the acts therein set out constitute an offense under section 5440, following the cases of *Hyde* v. *Shine* (199 U. S., 62), *Palmer* v. *Colladay* (18 App. D. C., 426), *United States* v. *Bunting* (82 Fed., 883), *United States* v. *Curley* (122 Fed., 738, affirmed in 130 Fed., 1), and *Tyner* v. *United States* (23 App. D. C., 324, 362).

IV.

The petition (Point V) refers to the exclusion of entries in Crawford's book, which he claimed to have shown to Chance. There was nothing on the face of the book to show that Chance had seen it, and therefore no additional weight could be given to Crawford's evidence by a production of the book.

V.

Point VI of the petition refers to the exclusion of certain testimony offered by the petitioner to show why he

did not deliver certain books of his bank to Mr. Trask (R., p. 163). Petitioner testified that Mr. Trask asked him to deliver the books, but that he did not give them to him. He was then asked, "Why did you not?" This question did not call for any conversation with Mr. Trask and the offer on the part of petitioner's counsel was excluded by the court, except as to the fact that the witness was instructed by his counsel not to allow anybody, except his counsel, to have or see any of his books and papers. Petitioner's counsel offered in the statement to show not only this fact, but also that petitioner had authorized his counsel to go to the district attorney's office, etc., to produce the books and papers there. This evidence was excluded on the ground that it in no way explains any transaction with Mr. Trask, but was an independent offer of self-serving declarations and conduct, which, under the authorities, are never admissible.

VI.

Petitioner's point VII refers to the exclusion of evidence offered by petitioner to show that on behalf of his company he, in good faith, expected to furnish the shoulder straps with the satchels. As far as the exclusion of this evidence is concerned, an examination of the record, pages 2, 6, and 7, will show that the testimony offered all occurred prior to the making of the alleged contract. The refusal of the court to instruct the jury that the fact that shoulder straps were not furnished was not to be taken as evidence

against the petitioner, was not error. The testimony excluded was merely an attempt on the part of petitioner to have eliminated from the case certain overt acts of his coconspirator, Lorenz.

VII.

Point VIII refers to the exclusion of Polk's testimony, the same being alleged conversations had with Lorenz. This testimony was excluded on the ground that when Lorenz was asked in regard to the subject-matter of the alleged conversations with Polk, he was asked facts that were collateral to his examination in chief, and therefore that the petitioner was bound by his answers.

An examination of the record shows that this is an ordinary criminal case, involving the construction and application of ordinary rules of law; that no question presented is of any gravity; that there is no conflict between decisions of State and Federal courts or between Federal courts of different circuits; and that it involves no matter of general interest to the public. The petitioner has had a fair trial, the questions involved have been passed upon by two courts, and none of them is novel or peculiar, or of such general importance as to justify this court in issuing the writ of certiorari.

It is submitted that the petition should be denied.

HENRY M. HOYT,
Solicitor-General.

MAY, 1907.

O

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 92.

WILLIAM GORDON CRAWFORD, PETITIONER,

vs.

THE UNITED STATES.

BRIEF FOR PETITIONER.

STATEMENT OF THE CASE.

The petitioner was born in 1869, and lived in Louisiana until 1893, when he became Deputy Auditor of the Treasury Department for the Post Office Department. He held that office until 1897, when on account of the political change which occurred at that time he resigned. In January, 1898, he was employed by Spencer Trask to act as manager of a corporation which Trask had organized to exploit a keyless letter box. The original corporation was afterwards merged into another known as the Postal Device and Lock Company. Some time prior to the spring of 1902 Crawford opened an office in Washington. The headquarters of the Postal Device and Lock Company remained in New York city in Spencer Trask's office—his secretary, Wade Chance, being the president of the company.

In 1902, and for some years prior thereto, August W. Machen held a position in the office of the First Assistant Postmaster General, and was called the General Superintendent of the Free Delivery system. In that position, subject to the direction of his superiors, the First Assistant Postmaster General and the Postmaster General himself, he had general charge of the purchase of equipment for letter carriers. Among the articles required for the use of the carriers was a satchel, to which ordinarily a shoulder strap was attached.

During the period mentioned there resided in Toledo, Ohio, one George E. Lorenz, who was an old acquaintance of Machen's. Early in 1903 a large number of indictments were found against Machen, several against Lorenz, and those against Crawford, which are hereinafter mentioned.

It was the custom of the Post Office Department every four years to advertise for bids for these satchels to be furnished for the ensuing four fiscal years. Such an advertisement was published in the spring of 1902 Several bids were filed in response to it, including one by the Postal Device and Lock Company. In accordance with the custom of the Department a board composed of clerks in the Department was appointed to examine the bids and the samples furnished by the bidders and make a recommendation as to the awarding of the contract. Upon the unanimous recommendation of this board the contract to furnish satchels for the four years beginning July 1, 1902, was awarded to the Postal Device and Lock Company, and a formal contract between the Post Office Department and the Postal Device and Lock Company, dated June 25, 1902, was entered into accordingly. The material parts of this contract will be found on page 230 of the record.

At the trial of this case below the three clerks who composed the Board in question were all examined as witnesses. They all testified that the contract was fairly and honestly awarded to the Postal Device and Lock Company by the

Post Office Department, and no question was made during the trial on that point.

On the 3d of June, 1902, just before the bid of the Postal Device and Lock Company was filed, a contract in writing was entered into between Lorenz and the Postal Device and Lock Company (82). In substance this was an agreement of partnership between Lorenz and the Company for the purpose of putting in a bid and carrying out the contract with the Government if one should be awarded on the bid. The Postal Device and Lock Company was to file the bid and take the contract in its own name and it was to receive out of the proceeds of the contract all expenses and twenty-five cents a satchel profit. If there was any profit over the twenty-five cents it was to go to Lorenz.

As a witness for the Government Lorenz testified that he was summoned from Toledo to Washington by a telegram from Machen about the 1st of June, 1902; that when he arrived here he found the contract just referred to all drawn up and ready for execution; and that he had had no communication or understanding of any kind with Crawford or anybody else in reference to the contract until he so came to Washington (122-125). He further testified that he was informed then that prior to his coming to Washington in June, 1902, Machen and Crawford had agreed that he, Lorenz, should appear in the matter in this way, and receive a part of the proceeds of the contract and divide it with Machen and Crawford in stated proportions (122).

Crawford, on the other hand, testified that prior to the middle of April, 1902, Machen, who knew that Crawford was contemplating filing a bid for his company, suggested that Lorenz would be a good man to join in the venture, and that Lorenz was soon coming to Washington (156). Crawford further testified that in the middle of April Lorenz did call at his (Crawford's) office in Washington; that he saw Lorenz for several consecutive days at that time; that Lorenz threatened to file a competitive bid, stating that he was

familiar with such business, and that as a result of the conversation which then took place between Lorenz and Crawford it was agreed, subject to the approval of the Postal Device and Lock Company, that Lorenz and the Company should enter into an agreement substantially as afterwards embodied in the contract of June 3, 1902. Crawford further testified that in April, before Lorenz left the city, Mr. Polk, a lawyer who had an office across the hall from Crawford's office, was called in and directed by Crawford and Lorenz together to draw up the proposed contract, and that Polk accordingly did draw the contract of June 3, 1902 (157). In this Crawford was corroborated by Polk (149) and also by Arthur N. Burnham, who was in Crawford's office during a part of the conversation between Crawford and Lorenz on this subject (154). It further appeared that between the middle of April and the 1st of June, Crawford was writing his company informing it of Lorenz's calls and stating what it was proposed to do in reference to the contract (241, 242).

Some weeks later, the exact date not appearing in the evidence, a second contract was entered into between Lorenz and the Postal Device and Lock Company (84). The principal difference between this contract and the first one was that a certain proportion of the contract price of each of the three classes of satchels referred to in the contract with the Government was to go to the company and the rest was to go to Lorenz.

The second Lorenz contract also provided that the Postal Device and Lock Company should furnish the "body portions" of the satchels, and that Lorenz should furnish the shoulder straps; and it further provided that Lorenz should be charged with "the necessary traveling expenses incurred by the Postal Device and Lock Company in connection with the manufacture" of the satchels (86).

Lorenz testified that this second contract was handed to him by Crawford at Hartford (where the satchels were

manufactured) in September, 1902, and that prior to that time he had had no communication with Crawford in reference to that new contract (122). He claimed that practically everything that was done to which he was a party was arranged between Machen and Crawford, and that he, Lorenz, simply carried out what Machen and Crawford had arranged.

Crawford and Polk both testified that the second contract was substantially agreed upon between Lorenz and Crawford about the time the company's bid was put in, early in June, 1902 (158, 152). On the cross-examination of Lorenz it developed that in response to a letter written to him by Crawford on July 10, 1902 (127), he, Lorenz, at that time sent to Crawford by mail a memorandum in his, Lorenz's, handwriting, a fac-simile of which will be found opposite page 128 of the record. On examination of this momorandum it will be seen that in the middle of July Lorenz in his own handwriting had figured out the exact proportion which he was to receive of the proceeds of the contract on account of the satchels of the several Classes A, B, and C, and these proportions agreed to a cent with the amounts afterwards put into the second contract between him and the Postal Device and Lock Company, so that on this point it was demonstrated that his testimony was false.

Down at least until July 2, 1902, Crawford was endeavoring to get from manufacturers proposals for manufacturing the bags and the shoulder straps (247, 249, 250, 160, 161). About the 1st of July he learned that the shoulder strap which had been in use with these satchels for several years, a sample of which strap he had sent to the manufacturer with whom he had finally arranged to manufacture the bags, carried a patent buckle and was known as the Lamb strap; that the manufacturer had found that he could not buy the buckle without buying the strap, and that that strap would be furnished only to the Government (108). A few days later Crawford went to Lamb's place in New York and there he was told that that strap would be furnished

only to the Government (159). Early in August Crawford saw Machen in the latter's office at Washington, and Machen demanded that the Lamb strap be furnished. Upon Crawford replying that the company would furnish that strap if it did not cost any more money and the company could get it, Machen replied: "Well, it doesn't make any difference about the cost, because we will ship you those straps;" or, "The Government or department will ship you those straps and we will adjust any difference about the cost before you are paid for the year's orders" (159).

Lorenz, as well as Crawford, testified that there never was any agreement or understanding to which he was a party, or of which he knew, that the straps were not to be furnished (127).

By a draft dated October 15, 1902, there was paid to the Postal Device and Lock Company $15,800 for satchels of class B (92, 89). The following payments were made by the Post-Office Department in addition to the first payment on account of the satchels furnished under the contract in question: December 20, 1902, $5,481.57 on account of satchels of class A (90, 238); on January 15, 1902, $3,337.02 on account of satchels of Classes A and C (89, 90), and on March 17, 1903, $2,374.74 on account of satchels of Classes A and C (89, 91).

All these payments were for the full contract price of the satchels of the several classes specified. No shoulder straps, however, were furnished by the contractor with any of the satchels. All the straps that were furnished to postmasters with the satchels were the Lamb strap, and were supplied by the Government.

It was admitted by defendant at the trial that when the first three payments were made to Lorenz by the Postal Device and Lock Company, Lorenz remitted about one-fourth of the amount to Crawford, the first remittance being made by a draft payable to bearer, the second in cash by express, and the third by a draft payable to Crawford's order. No

payment was made to Lorenz out of the last collection made by the company.

In March, 1903, the investigation of various alleged irregularities in the Post Office Department began. Soon afterwards the Postmaster General notified the Postal Device and Lock Company that purchases under its contract were suspended on account of the exhausted state of the appropriation (121). No opportunity was therefore afforded to determine by the course of events whether or not Machen's statement to Crawford, that at the end of each fiscal year a reasonable deduction would be made from the amounts to be paid to the company on account of the shoulder straps, was made in good faith.

On or about the 29th day of May, 1903, Crawford surrendered to the post office inspectors the originals of the two contracts between the Postal Device and Lock Company and Lorenz (166).

On the 31st day of July, 1903, an indictment, No. 23866, was filed in the Supreme Court of the District of Columbia against Crawford, charging him with violating section 5438 of the Revised Statutes of the United States by presenting to Thomas W. McGregor, a clerk in the Post Office Department, for payment, the several vouchers upon which the Government had paid for satchels furnished under the contract of June 25, 1902 (1-6). On the same day another indictment, No. 23865, was filed in the same court against Crawford, Machen, and Lorenz, and also Lorenz's wife, Martha J. Lorenz. This indictment contains twenty counts, and in all of them the defendants were charged with violating section 5440 of the Revised Statutes of the United States by conspiring to defraud the Government. In substance the conspiracy charged was an agreement to get the Post Office Department to pay for bags with straps when the straps were not to be furnished (10 to 24).

Nearly two years later, on April 3, 1903, indictment No. 24688 was filed in the same court against Machen, Lorenz, and Crawford (25 to 67).

This last indictment contains six counts, in all of which the defendants were charged with a violation of section 5440 by conspiring to defraud the Government. In the first count the charge is that the defendants agreed that Machen should receive a part of the proceeds of the contract between the Postal Device and Lock Company and the Government. The other counts contain the same charge, with the additional averment in various forms that Machen was to receive the money for the purpose of influencing him in the performance of his official duties.

A demurrer was filed to the last-mentioned indictment, and as to counts 2, 3, and 4 the demurrer was sustained (68, 70). Afterwards all three indictments were consolidated (75).

On May 23, 1905, Machen appeared in open court and pleaded guilty to indictment No. 24688, and was immediately sentenced to imprisonment for the period of two years, to take effect from and including the date of the expiration of a sentence pronounced against him in another case in which he and Lorenz and others had previously been convicted (74).

The trial of Crawford alone upon the consolidated indictments proceeded immediately after Machen had thus pleaded guilty. The trial lasted until June 22, 1905, when the jury was discharged because they were unable to agree (75).

Crawford alone was brought to trial again upon the consolidated indictments in the fall of 1905.

Before the case went to the jury at the second trial the court required the Government to elect upon which of the numerous counts it would ask for a verdict. The Government thereupon abandoned entirely indictment No. 23865, the indictment containing twenty counts, for conspiring to defraud by getting pay for straps not furnished. It also abandoned the first count of indictment No. 23866, for the reason that the voucher referred to in that count was for satchels of Class B, as to which the contract of June 25, 1902,

did not require the contractor to furnish shoulder straps. (See the first two paragraphs of the general charge to the jury, page 213.)

The jury found Crawford guilty as to counts 2, 3, and 4 of indictment No. 23866, and the first count of indictment No. 24688, and rendered a verdict of not guilty as to the first count of indictment No. 23866, and as to all the counts of indictment No. 23865 (8, 9). But a motion in arrest of judgment as to counts 2, 3, and 4 of indictment No. 23866 was sustained by the court (9, 10).

Thus of the thirty counts of these several indictments the defendant stands cleared of all except the first count of indictment No. 24688. As to that Crawford's motion for a new trial was overruled, and he was sentenced to imprisonment in the penitentiary for two years, from which judgment of the court he appealed to the Court of Appeals of the District of Columbia (10). In the latter court the case was heard before Mr. Chief Justice Shepard and Justices McComas and Gould, the latter sitting in place of Mr. Justice Robb, who was disqualified by having been connected with the case while an officer of the Department of Justice before his appointment to the judgeship of the Court of Appeals. In the opinion delivered by Mr. Justice Gould, speaking for himself and Mr. Justice McComas, the judgment against Crawford was sustained, Chief Justice Shepard dissenting. The prevailing opinion begins on page 271 of the record and the dissenting opinion begins on page 289.

Upon petition presented to this court, a brief in opposition to which was filed by the Government, this court granted a writ of certiorari, and under the return to that writ the record and case are here for review.

It is deemed unnecessary in this statement to go fully into the matters of law raised in the record. They will fully appear from the assignments of errors and the discus-

sion of those assignments in the brief. Suffice it to say now that they involve the following questions:

The sufficiency of the count of the indictment No. 24688, upon which Crawford stands convicted, and the question whether the words "to defraud the United States" in section 5440 apply to a case where an official of the Government becomes interested in a contract, with the execution of which he has official duties to perform, when there is no intent on his part, or upon the part of the contractor, that he shall use his influence in favor of the contractor.

Whether an employee of one party to a litigation is a competent juror when objected to on that ground by the other party.

Whether when the Government has offered evidence tending to show that a defendant in a criminal case has abstracted written evidence for the purpose of suppressing it, it is competent for the defendant to testify that he took the writings with the intention not to suppress them, but to produce them at the trial.

Whether when the Government has offered evidence tending to prove that a defendant was charged by a third party with having committed an offense, it is competent for him to prove that immediately upon being so charged, he, through his counsel, asserted his innocence.

Whether in a criminal trial when the Government has proved that the defendant refused to give up written evidence which a third party had endeavored to get from him for the Government, the defendant may show that prior to such refusal he, through his counsel, offered to surrender that evidence to the prosecuting officer.

Whether when the Government in a criminal trial has offered evidence tending to show that the defendant concealed certain evidence from the corporation which he represented, it is competent for the defendant to prove that he did give the corporation such information in writing.

Whether when a defendant is on trial charged with two

offenses, one involving moral turpitude, and the other not involving it, evidence of his good faith in the former should be excluded because bad faith is not charged in the latter.

Whether when two or more persons are indicted for conspiracy, and one of them alone is on trial, and another is used by the Government as a witness against the defendant on trial, it is competent for the person on trial to show the bias of the witness by proving that before his co-defendant turned State's evidence, he had unsuccessfully endeavored to have the party on trial unite with him in a perjured defense and in the destruction of evidence.

Whether when the charge against a defendant in a criminal case is that he agreed that a certain public official should receive a part of the proceeds of a contract, the defendant should be acquitted of that charge if the Government fails to prove it beyond a reasonable doubt.

Whether a conviction in a criminal case can be sustained over proper objection and exception, where the prosecuting officer in his closing address to the jury attempts to influence their verdict by telling them that another party has admitted his guilt, and emphatically reaffirms that statement to the jury after the court has rebuked him for the first offense and instructed the jury to disregard what he said.

Assignment of Errors.

The trial court erred in making, and the Court of Appeals in sustaining, the following rulings:

1. Overruling (70) the demurrer to the first count of the indictment, No. 24688, the grounds, among others, of said demurrer to said first count reading as follows (68):

"(*a*) While in said count it is attempted to charge a conspiracy to defraud the United States, it does not appear how the Government could have been defrauded by the alleged scheme or conspiracy.

"(*b*) While it is averred that the defendant, Machen, was to receive a part of the proceeds of the contract referred to, it is not averred directly or indirectly that this was intended to influence the official action of said defendant.

2. Granting the Government's first prayer, in the following words (207):

"The jury are instructed that if they find from the evidence, beyond a reasonable doubt, that the defendant Crawford agreed, directly or indirectly, with Machen and Lorenz, or either of them, that he, said Crawford, should procure the Postal Device and Lock Company to bid for the contract to furnish satchels to the Post Office Department of the United States, and should cause the said Postal Device and Lock Company to make a contract with Lorenz to pay to Lorenz a share of the money received by said Postal Device and Lock Company, out of the payments made by the Post Office Department on account of the said satchel contract, and should further find that the defendant Crawford agreed with Machen and Lorenz, or either of them, directly or indirectly, that this money so paid to Lorenz, by said Postal Device and Lock Company, or any part thereof, should be divided in any way between the said Crawford, Machen and Lorenz, and should find beyond a reasonable doubt that the defendant presented a claim or bill for $15,800, as described in the indictment 24688 to the Post Office Department, their verdict should be guilty on said first count."

3. Refusing to instruct the jury to render a verdict in favor of the defendant on the first count of indictment No. 24688 (207).

4. Overruling the defendant's challenge for cause of the juror, John C. Haley (77).

5. Refusing to grant the motion of counsel for the defendant (103, 104) to withdraw from the consideration of the jury the letter of December 7, 1903, from the Fabrikoid

Company to the defendant, said letter (102) being as follows:

"DECEMBER 7, 1903.

"Mr. WILLIAM G. CRAWFORD,
1407 *F Street, Washington, D. C.*

"DEAR SIR: We have your favor of the 4th, showing us letters which are not necessary to be copied. We thank you for the same. We want to draw your attention to a little thing that has come to the attention of the writer today, and which we confess we do not like. We refer to a removal from our files of a copy of a letter to you, and the erasure of the page from the index. We can think of no one who would be interested enough in any letter to you to have done this, and circumstantial evidence must directly point to you. The letter is dated April 21st, 1902. We have not looked back in the stenographer's books for a copy of this letter, and we hope you will see fit to send this to us in order to complete our files. We gave you without question the right to look through our correspondence, and this has deeply affected us as a want of good faith on your part. We do not feel as if we care to go on making copies or doing anything towards helping you in this matter when you have apparently seen fit to make a breach of faith with us. We might say that in making the erasure in the index, the existence of the letter was only partially removed, as our system of cross-index on the pages of both our previous letters to you and the one after point both ways to page 121, which contained this letter, under date of April 21st. We have not yet gone through other files to find how many other letters may have been removed; but in view of this we would not be surprised to find that some other correspondence may have disappeared.

"Very truly yours,

"FABRIKOID COMPANY,
"JOHN ASPINWALL,
"President."

6. Refusing to allow counsel for the defendant to give in evidence to the jury the letter of December 8, 1903, from A. S. Worthington to John Aspinwall, President of the Fabrikoid Company (105, 196), said letter being as follows:

"WASHINGTON, D. C., *Dec. 8th*, 1903.

"JOHN ASPINWALL, Esq.,
President of the Fabrikoid Company,
Newburgh, N. Y.

"DEAR SIR: My client, Mr. William G. Crawford, has just shown me your letter of yesterday. His letter of December 4th, to which yours is a reply, was written at my suggestion.

"Mr. Crawford is more surprised at the contents of your letter than you can be at the discovery that some of the correspondence to which you refer is missing. He understood from what passed between you and him when he saw you in Newburgh last summer that you were perfectly willing that he might take any of the correspondence which would be useful to him in the case against him. I have no idea now that any of this correspondence will be of any use to him or that he will require it at all, but it may be when the trial comes on it will be useful in fixing dates. It was only as a precautionary measure that I advised him to obtain the correspondence in the first place, and to write to you for copies as he did on the 4th instant. Mr. Crawford, with the understanding above referred to, did take from your files several of his letters to your firm. He has them in his possession now. I would like very much to have the originals here, but if you wish to have them returned, he will send them to you at once, and in any event I will ask Mr. Crawford to have copies made and send them to you tomorrow.

"Yours very truly,

A. S. WORTHINGTON."

7. Refusing to allow the defendant as a witness in his own behalf to tell the jury why he took the letter of April 18, 1902, and the copy of the reply thereto, dated April 21, 1902, from the office of the Fabrikoid Company (198).

8. Refusing to allow the defendant as a witness in his own behalf to state whether when he took the letters referred to in the last preceding assignment of error from the office of the Fabrikoid Company he intended to destroy them (199).

9. Refusing to allow the defendant to tell the jury what

he did with the letters just referred to, after he had taken them (199).

10. Refusing to grant the motion of defendant's counsel to strike out so much of the testimony, especially of the witness Aspinwall, as related to the taking from his files of the letter of April 18, 1902, and the reply thereto, dated April 21, 1902 (202).

11. Refusing to allow the defendant as a witness in his own behalf to tell the jury why he did not give or exhibit to Spencer Trask "the books and papers relating to the business" of the Postal Device and Lock Company (165).

12. Refusing to allow the defendant to give in evidence to the jury pages 24 to 31 of the defendant's account book (171-259-263).

13. Refusing to allow the defendant to give in evidence to the jury the specific entries in that book relating to the payments of $5441.35 and $992.90 respectively made by the defendant on behalf of the Postal Device and Lock Company to Lorenz, with the marginal entries opposite thereto reading "Paid W. G. C. 25%"—all in connection with the contract of June 25, 1902, between the Postal Device and Lock Company and the Post Office Department (172, 262, 263).

14. Refusing to allow defendant's counsel to introduce in evidence some thirty letters written in 1902, prior to June 3, by the defendant, representing the Postal Device and Lock Company, to various persons, firms and corporations, said letters being offered as evidence tending to show that the defendant at the time they were written was endeavoring in good faith to get bids for bags with shoulder straps (162-264).

15. Refusing to give to the jury defendant's prayer numbered 8, in the following words (210):

"The jury are instructed that if they find from the evidence that when the contract of June 25th, 1902, between the United States and the Postal Device and Lock Company, in evidence, was entered into, the defendant, Crawford, in good faith, expected and intended that the Postal Device and Lock Company should furnish shoulder straps with the satchels of Class 'A' and Class 'C', referred to in said contract; that afterwards August W. Machen, Superintendent of General Delivery in the Post Office Department, in his official capacity, and of his own motion, directed that the shoulder strap known as the 'Lamb Strap' should be used with satchels delivered under said contract; that it was impossible for the Postal Device and Lock Company, or said Crawford, as its general manager, to obtain said straps; that the Lamb strap was accordingly furnished by the Government with the understanding on the part of said Crawford as the representative of said Company that at the end of each fiscal year a reasonable and proper deduction should be made from the amounts payable to said Company under said contract on account of its not furnishing shoulder straps for satchels of Class A and Class C, as required by the terms of said contract; and that in this regard said Crawford acted in good faith, and without any intent to inflict any pecuniary loss upon the Government, or to defraud it in any way, then the jury is instructed that as to indictment No. 24688 they are not to consider the fact the shoulder straps were not furnished with the satchels as evidence of the guilt of the defendant, Crawford."

16. Refusing to allow the defendant's witness, James K. Polk, on his direct examination, to tell the jury whether in a conversation between the witness and Lorenz in Judiciary Square, in 1903, Lorenz stated to the witness *in substance* that it would be well for Crawford to testify at the trial that $1,465 and some cents was sent back to him (Crawford) as repayment for the straps—as a payment on account of the straps for those five thousand bags, the court sustaining the objection to the question on the ground that the words "in substance" should not be used, but that counsel should put

the *exact words* in witness's mouth (151-152). (See foundation for this question in cross-examination of Lorenz, page 144.)

17. Refusing to allow the defendant as a witness in his own behalf to tell the jury whether at a certain meeting between Lorenz and Crawford and their respective counsel, he, the defendant, had said that Lorenz understood that the remittances which Lorenz was making back to the defendant were, as Lorenz understood, to be kept secret, but, as a matter of fact, the defendant intended to account to his Company for them (168).

18. Refusing to allow the defendant to tell the jury whether at the meeting referred to in the next preceding assignment of error, the defendant said that Lorenz had come to his office in the Spring of 1903, and had a conversation with him about relinquishing the contract between him (Lorenz) and the Postal Device and Lock Company (168).

19. Refusing to allow the defendant to tell the jury whether at the meeting last referred to, he, the defendant, said, in the hearing and presence of Lorenz and his attorney, that he, the defendant, did not know, or have any knowledge of any payments that Lorenz was making to Machen out of the money sent to him (168).

20. Refusing to allow the defendant to tell the jury whether after the Post Office Department investigation began (in the Spring of 1903), and prior to the defendant's first trial, Lorenz came to the defendant's office one night and requested him to mark the contract between him (Lorenz) and the Postal Device and Lock Company cancelled and deliver it to him (Lorenz) at his box in the Riggs House (168-169). (See Lorenz's cross-examination on this subject, 132.)

21. Refusing to give to the jury defendant's prayer numbered 13, in the following words (212):

"The jury are instructed that the evidence in the case tending to show the payments of money by said Lorenz to said Machen on account of payments received by said Lorenz from the Postal Device and Lock Company is not to be considered by the jury for any purpose whatever, unless the jury are satisfied by the evidence beyond a reasonable doubt that before said payments were made the defendant Crawford had agreed with said Machen and said Lorenz or with one of them that said payments should be made by said Lorenz out of the moneys so to be received by him."

22. Refusing to give to the jury defendant's prayer numbered 15 (212-213), said prayer being as follows:

"The jury are instructed that the evidence which has been admitted in this case tending to show that the defendant, George E. Lorenz, paid to the defendant, William G. Crawford, in the manner shown by the evidence, twenty-five per cent. of the amounts received by him on three different occasions from the Postal Device and Lock Company, is to be considered by the jury only in so far as in the opinion of the jury in reference to indictment 24688, it may tend to throw light upon the question of whether the defendant, William G. Crawford, was a party to the alleged agreement or understanding with said Lorenz and said Machen, or either of them, that a part of the money so received by said Lorenz should be paid to said Machen. If in the opinion of the jury such evidence does not throw any light upon that question, then it should be disregarded by the jury."

23. Refusing to grant the motion of counsel for the defendant to discharge the jury from the further consideration of the case when counsel for the Government in the closing argument to the jury said to the jury: "Machen has pleaded guilty" (205).

24. Again refusing on motion of defendant's counsel to discharge the jury when counsel for the Government, after the court had instructed the jury to disregard his statement

that Machen had pleaded guilty, repeated the statement, by saying to the jury:

"My reference to Machen was not that you might consider it against this man at all. You could not. But it is a fact you all know, and it has been repeated a dozen times in this case" (206).

ARGUMENT.

The first, second, and third assignments of error, as to the validity of the first count of indictment numbered 24688.

The first assignment of error grows out of the overruling by the court below of a demurrer to the first count of indictment numbered 24688.

The second and third assignments of error raise the same question by exceptions arising out of the instructions to the jury.

Section 1533 of the District Code is as follows:

"SEC. 1533. *Waiver of Demurrer.*—In all cases, civil or criminal, in which any or either party shall demur to any indictment, declaration, or other pleading of the adverse party, and said demurrer shall be overruled, the party demurring shall have the right to plead over, by traverse or otherwise, without waiving his said demurrer; and upon appeal shall have the right to insist upon his demurrer and have the benefit thereof as fully as if he had not pleaded over."

The count in question is claimed by the Government to be valid under section 5440 of the Revised Statutes of the United States, which is as follows:

"If two or more persons conspire either to commit any "offense against the United States, or to defraud the United "States in any manner or for any purpose, and one or more "of such parties do any act to effect the object of the con- "spiracy, all the parties to such conspiracy shall be liable

"to a penalty of not less than one thousand dollars and not "more than ten thousand dollars, and to imprisonment not "more than two years."

It is not claimed by the Government that the count in question sets forth a conspiracy to commit any offense against the United States. It was claimed in the courts below, and doubtless will be insisted upon here, on behalf of the Government, that it is a good count under the clause of section 5440 which makes it a crime to conspire to defraud the United States.

One of the grounds of the demurrer was that it was not averred directly or indirectly that the money which it was charged Machen was to receive was to be paid to him to influence his official action (68).

The trial court sustained this count upon the sole ground that the United States is defrauded within the meaning of section 5440 when one of its officers acquires an interest adverse to the United States in a contract in the obtaining and carrying out of which he in any wise represents the United States. The Court of Appeals concurred in this view (275).

And both courts further held that the Government's first instruction was good, although it required the jury to find only that Machen was to receive a part of the proceeds of the contract with the Government—not that it was intended that he should be influenced in any way.

There are a number of sections of the Revised Statutes which provide for the punishment of those who receive or give bribes. (See sections 1781, 1782, 5449, 5450, 5451, 5499, 5500, and 5501. They are printed in full as an appendix to this brief.) In all of them it is an essential part of the offense that the money shall be paid or received with intent to influence the person bribed in the performance of his official duties.

Four other sections of the Revised Statutes (3739, 3740, 3741, and 3742), which are also included in the appendix

hereto, prohibit *any member of or delegate to, Congress* from becoming interested in any contract with the United States, and require that in every such contract there shall be inserted an express condition that no member of, or delegate to, Congress, shall be admitted to any share or part thereof, or to any benefit to arise therefrom. There is no statute which makes it an offense for any officer of the Government, except a member of Congress, to have an interest in a Government contract; nor is there any statute which punishes either the person or the official who is given an interest in a public contract, with the carrying out of which he is connected officially, when such gift is neither given nor received with any wrongful intention in the mind of any party to the transaction.

It was for this reason, doubtless, that in the count of indictment No. 24688 upon which the defendant was convicted he was charged with conspiring with Machen and Lorenz not to commit any offense against the United States, but to defraud the United States. Clearly he could not be convicted of conspiring to commit an offense against the United States, because for the commission of the offense of bribery a corrupt intent is absolutely essential.

But the question arises whether that part of section 5440 which refers to conspiracies to "defraud the United States" can be strained to apply to a case where an official without wrongful intention is found in a position where his personal interest is in conflict with his duty to the Government. If the phrase "to defraud the United States" can be given such a broad application, then those words are of such indefinite signification that it is impossible for any one to know in advance of judicial determination to what they may extend.

In United States *vs.* Wiltberger, 5 Wheaton, 76, Chief Justice Marshall, speaking for the entire court, said:

"The rule that penal laws are to be construed strictly, is, perhaps, not much less old than construction itself. It is founded on the tenderness of the law for the rights of individuals; and on the plain principle that the power of pun-

ishment is vested in the legislative, not in the judicial department. It is the legislature, not the court, which is to define a crime, and order its punishment.

"It is said that, notwithstanding this rule, the intention of the lawmaker must govern in the construction of penal as well as other statutes. This is true. But this is not a new independent rule, which subverts the old. It is a modification of the ancient maxim, and amounts to this, that though penal laws are to be construed strictly, they are not to be construed so strictly as to defeat the obvious intention of the legislature. The maxim is not to be so applied as to narrow the words of the statute to the exclusion of cases which those words, in their ordinary acceptation, or in that sense in which the legislature has obviously used them, would comprehend. The intention of the legislature is to be collected from the words they employ. Where there is no ambiguity in the words, there is no room for construction. The case must be a strong one indeed, which would justify a court in departing from the plain meaning of words, especially in a penal act, in search of an intention which the words themselves did not suggest. To determine that a case is within the intention of a statute, its language must authorize us to say so. It would be dangerous, indeed, to carry the principle, that a case which is within the reason or mischief of a statute, is within its provisions, so far as to punish a crime not enumerated in the statute, because it is of equal atrocity, or of kindred character, with those which are enumerated. If this principle has ever been recognized in expounding criminal law, it has been in cases of considerable irritation, which it would be unsafe to consider as precedents forming a general rule for other cases."

In United States *vs.* Brewer, 139 U. S., 278, Mr. Justice Brewer, in delivering the opinion of the court said:

"Laws which create crime ought to be so explicit that all men subject to their penalties may know what acts it is their duty to avoid (United States *vs.* Sharp, Pet. C. C., 118). Before a man can be punished, his case must be plainly and unmistakably within the statute."

In Todd *vs.* United States, 158 U. S., 278, 282, Mr. Justice Brewer, delivering the opinion of the entire court, except Mr. Justice Harlan dissenting, said:

"It is axiomatic that statutes creating and defining crimes cannot be extended by intendment, and that no act, however wrongful, can be punished under such a statute unless clearly within its terms. 'There can be no constructive offences, and before a man can be punished, his case must be plainly and unmistakably within the statute' (United States *vs.* Lacher, 134 U. S., 624; Endlich on the Interpretation of Statutes, sec. 329, 2d ed.; Pomeroy's Sedgwick on Statutory and Constitutional Construction, 280)."

"The elementary rule is that penal statutes must be strictly construed, and it is essential that the crime punished is plainly and unmistakably within the statute" (Ballew *vs.* United States, 160 U. S., 197).

"The statute does not cover the transaction, and however reprehensible the acts of the plaintiffs in error may be thought to be, we cannot sustain a conviction on that ground. Although the objection is a narrow one, yet the statute being highly penal, rendering its violator liable to fine and imprisonment, we are compelled to construe it strictly. Full effect is given to the statute by holding that the language applies only to that kind of a paper which depends upon a lottery the drawing of which has not yet taken place, and which paper purports to be a certificate, etc., as described in the act. If it be urged that the act of these plaintiffs in error is within the reason of the statute, the answer must be that it is so far outside of its language that to include it within the statute would be to legislate and not to construe legislation" (France *vs.* United States, 164 U. S., 676, 682, 683).

To maintain the count in question, therefore, it is necessary for the Government to claim that the United States is defrauded within the meaning of section 5440 whenever one of its officials is interested in a contract with the Government with which he has anything to do in his official capacity, whether he in fact intends to perform and does perform his duties in relation to the contract properly or not. He may be so honest that he "leans backward" and holds the contractor to a more rigid compliance with his obliga-

tions than he otherwise would, yet the United States is defrauded.

In substance, the proposition is that whenever two persons agree to do anything from the doing of which the Government *may* sustain an injury they agree to defraud the Government.

It was held in Tyner *vs.* United States, 23 App. D. C., 324, and in other cases cited by opposing counsel, that the words "to defraud the United States," in section 5440, are not to be construed as referring only to agreements by which the Government will be injured pecuniarily or in its property rights. It is submitted, however, that in no case has it been decided that an agreement is to be held a conspiracy to defraud the United States under section 5440 simply because the agreement, if carried out, might be an injury to the Government. And it is further submitted that if section 5440 in express terms made it an offense to enter into any agreement or conspiracy which, if carried out, might injure the United States, such a provision would be absolutely void for uncertainty. On this subject the case of Czarra *v.* Board of Medical Supervisors, 25 App. D. C., 443, is directly in point. Such a law would require the courts in each particular case to decide whether what the parties charged contemplated doing would injure the United States, if done. There are thousands of acts in which opinions might differ in that regard, and no one could tell what would, or what would not, be held to be a crime under such a provision.

If a railroad company should agree with an official of the Government—legislative, administrative, or judicial—before whom the affairs of the company might come for official consideration and action or decision, to give him a free annual pass over its road, neither party contemplating or expecting that the official would be influenced in the performance of his duties having relation to the railroad company by receiving such a pass, we would have in all

substantial particulars a case exactly like that which is presented by the count now under consideration, and both parties to the transaction would be guilty of conspiracy to defraud the Government, if the count in question is good.

It would seem that under a rule too well recognized to require citation, in using in section 5440 the phrase "to defraud the United States" Congress must have simply intended to create for the protection of the United States a common law offense well known as applied to individuals. The subject of conspiracies to defraud at common law is well presented in 2 Bishop on Crim. Law, sects. 198 to 214. That learned author says (section 213):

"Plainly if the thing contemplated by the conspirators to be done, whether as means or end, was neither in civil jurisprudence, nor criminal, a cheat, the prosecution could not be sustained."

Again he says (section 214):

"Where there is no evil intent, and nothing unlawful appears, an indictment will not lie."

In Neal *vs.* Clark, 95 U. S., 704, this court had under consideration the construction of a section of the bankrupt law of 1867, which provided that "no debt created by the fraud or embezzlement of the bankrupt, or by the defalcation of a public officer, or while acting in a fiduciary capacity, shall be discharged under this act."

And it was held that since the word fraud was associated in that clause with the word embezzlement, it could not be made to cover acts not involving moral turpitude.

Speaking for the entire court in that case, Mr. Justice Harlan said:

"It is a familiar rule in the interpretation of written instruments and statutes that 'a passage will be best interpreted by reference to that which precedes and follows it.' So, also, 'the meaning of a word may be ascertained by reference to the meaning of words associated with it.' In Broom's

Legal Maxims, p. 450, it is said: 'It is a rule laid down by Lord Bacon, that *copulatio verborum indicat acceptationem in eodem sensu*—the coupling of words together shows that they are to be understood in the same sense. And where the meaning of any particular word is doubtful or obscure, * * * the intention of the party who has made use of it may frequently be ascertained and carried into effect by looking at the adjoining words.' The same author says (p. 455): 'In the construction of statutes, likewise, the rule *noscitur a sociis* is very frequently applied; the meaning of a word, and, consequently, the intention of the legislature, being ascertained by reference to the context, and by considering whether the word in question and the surrounding words are, in fact, *ejusdem generis*, and referable to the same subject-matter.'

"Applying these rules to this case, we remark that in the section of the law of 1867 which sets forth the classes of debts which are exempted from the operation of a discharge in bankruptcy, debts created by 'fraud' are associated directly with debts created by 'embezzlement.' Such association justifies, if it does not imperatively require, the conclusion that the 'fraud' referred to in that section means positive fraud, or fraud in fact, involving moral turpitude or intentional wrong, as does embezzlement; and not implied fraud, or fraud in law, which may exist without the imputation of bad faith or immorality."

Still more pertinent is the case in this court of United States *vs.* Britton, 108 U. S., 199.

The prosecution in that case was under that part of section 5440 which punishes conspiracies to commit an offense against the United States. The particular offense which the defendants were charged with conspiring to commit in that case was a violation of section 5209 of the Revised Statutes, which, in substance, provides that every president or other officer of any banking association "who embezzles, abstracts, or unlawfully misapplies any of the moneys, funds, or credits of the association shall be guilty of a misdemeanor, and shall be imprisoned for not less than five years or more than ten."

Another section of the revised statutes prohibited the payment by any banking association of a dividend out of its

capital. It was charged that the defendants had conspired to misapply the funds of the association by knowingly paying a dividend which must come out of the capital of the association. It was held that no offense was charged. In delivering the opinion of the court, Mr. Justice Wood said:

"The indictment having charged a conspiracy between the defendants to misapply the moneys of the association, proceeds to aver by what means the application was to be effected, namely, by procuring to be declared by the association a dividend when there were no net profits to pay it. If procuring the declaring of such a dividend by the association is not a willful misapplication of its funds by these defendants, then the indictment charges no offense. The declaring of a dividend by the association when there were no net profits to pay it is, in our judgment, not a criminal misapplication of its funds. It is an act done by an officer of the association in his official and not in his individual capacity. It is, therefore, an act of maladministration and nothing more, which, while it may subject the association to a forfeiture of its charter, and the directors to a personal liability for damages suffered in consequence thereof by the association or its shareholders, does not render them liable to a criminal prosecution. The act belongs to the same class as the purchase by a banking association of its own shares when not necessary to prevent a loss on a debt due it, which, in *United States vs. Britton*, 107 U. S., 655, we held not to be a criminal misapplication of the funds of the association. If, therefore, the indictment had charged that the defendants had misapplied the funds of the association by themselves declaring a dividend, when there were no net profits to pay it, it would not have charged a criminal act, much less when it merely charges that they conspired to procure the association to declare a dividend under like circumstances. So that it appears on the face of the indictment that the conspiracy charged was not a conspiracy to commit an offense against the United States."

In Spring Company *vs.* Knowlton, 103 U. S., 49, the corporation which was a party to the suit had illegally increased its capital stock. A stockholder who had paid in part his subscription to this illegal stock rescinded his con-

tract and sued the company to recover what he had so paid. It was held that he was entitled to recover. Mr. Justice Woods, in delivering the opinion in that case, said:

"It is to be observed that the making of the illegal contract was *malum prohibitum*, and not *malum in se*. There is no moral turpitude in such a contract, nor is it in itself fraudulent, however much it may afford facilities for fraud."

In this connection the court is reminded of the well-settled principle in the construction of statutes, which is thus stated by Mr. Justice Brewer in delivering the opinion in Smith *vs.* Townsend, 148 U. S., 490:

"Statutes against frauds are to be liberally and beneficially expounded. This may seem a contradiction to the last rule, most statutes against frauds being in their consequences penal, but this difference is here to be taken, when the statute acts upon the offender and inflicts a penalty, as the pillory or a fine, it is then to be taken strictly, but when the statute acts upon the offense, by setting aside the fraudulent transaction; here it is to be construed liberally."

The first count of indictment 24688 is therefore bad, either because its averments do not state a case within the meaning of section 5440 or because the part of that section under which the count is drawn is void for uncertainty.

If this conclusion shall be sustained by the court, it will be unnecessary to consider any of the other assignments of error.

The 4th Assignment of Error.

As to the disqualification of a juror who is in the employ of one of the parties to the trial.

At the time the juror John C. Haley was challenged for cause by the defendant he was the proprietor of a drug store in Washington which is a sub-station of the Washington

Post Office, and was the clerk in charge of that sub-station, and was receiving from the Post-Office Department an annual compensation of $300, which included his compensation for his services as clerk in charge of the sub-station; "also whatever rent may be necessary" (77).

All the books on the common law dealing with the subject of the qualifications of jurors lay it down as accepted and unquestioned law that it is ground for challenge for cause by a party to a suit that the juror is in the employ of the other party. In 3 Blackstone Comm., 363, it is said:

"A principal challenge is such where the cause assigned carries with it *prima facie* evident marks of suspicion, either of malice or favor, as * * * that he is the party's master, servant, counsellor, steward, or attorney * * * all these are principal causes of challenge; which if true cannot be overruled, for jurors must be *omnia exceptione majores.*"

In 1 Chitty, Crim. Law, 541, 542, and 1 Bishop, New Crim. Procedure, section 902, it is said that if a juror be under the power of either party, or in his employment, he is incompetent.

In Block *vs.* State, 100 Ind., 357, a district attorney for a circuit comprising several counties had appointed a deputy for a single township in one of those counties. A verdict of guilty was set aside because the deputy sat as a juror in the case, and this conclusion was reached although there was a statute in force in Indiana at the time enumerating the grounds of a challenge for cause with much particularity which did not apply to the case, and an affidavit of the juror was filed in the case stating that his sitting as a juror was an inadvertence, and that he had decided the case on the evidence only. The defendant did not know that the juror was a deputy until after the verdict. The opinion in the case contains a full review of the English and American authorities to the point that a juror who is in the employ of one of the parties to a suit must be excluded if challenged by the other party on that ground.

At common law, as we all know, it is ground of challenge for cause of a juror that he is related to the other party within the ninth degree, although the relationship is one by marriage (1 Chitty, Crim. Law, 541; 1 Bishop, New Criminal Procedure, sec. 901).

Mr. Bishop cites in this connection the North Carolina case of State *vs.* Berry, Busbee, 330, in which it was held under the common law that a challenge to a juror was properly sustained because the great-grandmother of the juror was the sister of the grandmother of the defendant.

In Mitchell *vs.* R. R. Co., 63 Ga., 173, the trial court sustained a challenge by the plaintiff to one of the jurors on the ground that he was an employee of the defendant company. On appeal it was held that this was correct, the court saying:

"The power of employer over employee is that of him who clothes and feeds over him who is fed and clothed. Hence the common law excluded all servants, and our statutes have nowhere altered the rule, and it should not be altered. A close relative is a less dangerous juror, if not a dependent kinsman, than one who is dependent upon his employer."

In a later case the Supreme Court of Georgia in reversing a judgment and verdict because a challenge for cause was overruled, said:

"This case comes to this court on exceptions taken to the refusal to grant a new trial. Several assignments of errors were presented, but in our view of the case it is only necessary to discuss one of them. The fourth ground of the amended motion for a new trial alleges that 'the court erred in refusing the motion made by counsel of movant to excuse from service on the jury from the panel of jurors called to try said case W. A. Sweat, J. P. Lide, and Will Youmans, who were employés of the plaintiffs, and by reason thereof disqualified to serve as jurors in said case, said motion having been made before the commencing to strike or select the jury in said case: the same being error because: (*a*) The employés of parties litigant are presumed

to be prejudiced. (*b*) The jury trying the cause should be perfectly impartial between the parties. (*c*) Any cause which would prompt a juror to lean in favor of one side or the other should be excuse or cause for such juror from serving on the jury, and thereby not force the side against which he would lean to strike him therefrom, and thereby lose any right as to strikes.' The employés of the plaintiff were disqualified as jurors. It would not be questioned that under the express rule in the case of Central Railroad *vs.* Mitchell, 63 Ga. 173, the employés of the defendant corporation should be held to be disqualified; and no reason appears to us why the employés of one party would be more likely to have a leaning or to have prejudiced the case than the employés of another party to the cause. An employé, whether of an individual, a partnership, or a corporation, may be, in rare instances, an impartial juror in passing upon the rights of his employer. It is possible for a judge or juror to be so absolutely fair that he could try his own cause. But there must be a rule upon the subject, and that only rule that can be adopted with safety is one which recognizes the influence to which humanity is generally susceptible, and not a rule based upon rare exceptions. As said by Justice Jackson, in Central Railroad *vs.* Mitchell, *supra:* 'It is almost impossible, however incorruptible one may be, not to bend before the weight of interest: and the power of employer over employés is that of him who clothes and feeds over him who is fed and clothed. Hence the common law excluded all servants and our statutes have nowhere altered the rule, and it should not be altered. A close relative is a less dangerous juror, if not a dependent kinsman, than one who is dependent on his employer. (See 3 Chit. Black, side p. 363: Bacon's Abridg. 'Juries,' 2, 347, 5, 353: Tidd's Prac. 852, 3.') The employés of a plaintiff should be disqualified as jurors for the same reason that they would be if they were the employés of the defendant; and employés of a person or partnership should be disqualified for the reason that would disqualify them if they were the employés of a corporation. A juror must be *omni exceptione major.* If, then, these three jurors were in fact employés of the plaintiff, they should have been excused for cause, if proper objection was made at the proper time. A jury trial is a travesty unless the jurors are impartial" (Atlantic Coast Line R. Co. *v.* Bunn, 58 S. E. Reporter, pp. 538-539).

In Hubbard *vs.* Rutledge, 57 Miss., 6, there had been a verdict for the defendant. During the organization of the jury the plaintiff challenged for cause a juror named Berry because he was a clerk of the defendant. The challenge was overruled; whereupon the plaintiff challenged the juror peremptorily. All the peremptory challenges were exhausted before the panel was completed. The supreme court of the State reversed the action of the trial court because of the action of the court in holding Berry to be competent to sit as a juror in the case.

In Louisville, &c., R. Co. *vs.* Mask, 64 Miss., 738, the trial court had sustained a challenge for cause on the ground that the juror challenged was in the employ of the defendant railroad company. This ruling the Supreme Court of Mississippi sustained, saying:

"It does not matter that he had the self confidence to swear that he could try the case impartially."

The only suggestion that counsel have been able to find of any different doctrine is in 17 Am. & Eng. Ency. (2d ed.), 1127. The general rule is there laid down that being in the employment of one of the parties disqualifies a juror. But, it is added, "Sometimes, however, this is apparently regarded as a matter for the discretion of the court." Two cases are cited as sustaining this apparent departure from the general rule—Goodrich *vs.* Burdick, 26 Mich., 39, and Richey *vs.* Missouri Pac. R. Co., 7 Mo. Apps., 581. In the first of those cases the trial court sustained a challenge by one of the parties to the juror on the ground that he was a clerk in the employ of the other party, and in the other case the trial court held a juror disqualified who was in the employ of officers of the defendant corporation, the juror in the latter case having said that if the testimony was evenly balanced he would be in favor of the corporation, but would render a fair verdict on the evidence. In both cases the appellate tribunals simply held that the trial court did not abuse its

discretion in excusing the juror. And quite recently the Supreme Court of Michigan has expressly held that it was error to overrule a challenge to a juror on the ground that the juror was in the employ of the other party (Pearce *vs.* Quincy Mining Company, 149 Mich., 112).

As was said by the Supreme Court of Nebraska in R. Co. *vs.* Cook, 37 Neb., 435, 437, there is an immense difference between discharging a juror and retaining him. To discharge him can seldom, if ever, do any harm, while to retain him, if his competency is doubtful, may be immense injury to one party or the other. And to the same effect is N. P. R. Co. *v.* Herbert, 116 U. S., 642.

If a juror had been found to be related to Crawford in the seventh or eighth degree and neither of them had ever heard of the other before, a challenge by the Government for cause would necessarily have had to be sustained.

If this verdict shall be upheld, a jury in a case like this might be made up of clerks of the department concerned, every one of them holding his place at the will of the real prosecutor—the head of that department. A marshal directed to summon jurors for service in any circuit or district court of the United States might fill the panel by going to the nearest custom house.

The 5th, 6th, 7th, 8th, 9th, and 10th Assignments of Error.

As to the rulings of the trial court allowing the Government to prove as a part of its case-in-chief that the defendant had taken away from the office of the Fabrikoid Company certain letters and refusing to allow the defendant to explain why he took them, or what he did with them, and in allowing the Government to put in evidence Aspinwall's letter to Crawford charging the latter with abstracting a part of the files of the Fabrikoid Company and refusing to allow the defendant to offer in evidence the reply to that letter written at Crawford's request by his counsel.

The testimony of Mr. Aspinwall, the president of the Fabrikoid Company, on this subject will be found on pages 100 to 103 of the record. It will be seen that after the defendant took away the letters in question Aspinwall, on December 7, 1903, wrote to the defendant in Washington, charging him with having taken the copy of the letter of April 21 from the Fabrikoid Company's letter book. The Government proved in this way that the defendant had taken the letters, and that he had been charged with the taking. No objection was made to this evidence by defendant's counsel, when it was offered, for the obvious reason that it was entirely competent as a part of the Government's case-in-chief. The taking of the letters tended to prove, in the absence of explanation, that the defendant was endeavoring to suppress evidence that might be used against him at the trial. The letter of December 7 was competent as showing that he had been charged with this attempted suppression, and, in the absence of anything further, it tended to show that he had by his silence admitted the truth of the charge. But neither on the cross-examination of Aspinwall (107), nor as a part of the defendant's evidence in reply (198, 199, 200), would the trial judge allow the defendant to show that he took the letters not for the purpose of suppressing them, but for the purpose of having them preserved as evidence; nor that in fact he took them to his counsel for the purpose of having them used as evidence; nor that when charged with a breach of faith in taking the letters he at once, through his counsel, by the letter of December 8, 1903, in the record (105, 196), denied the charge of breach of faith in taking the letters and offered to return them. And, after the evidence was all closed, the trial judge refused to exclude Aspinwall's testimony on this subject, and gave as a reason for the refusal that the evidence had been admitted to impeach the credibility of the defendant as a witness (203), forgetting that the evidence of the Government on this subject had all been admitted as a part of the Government's case-in-chief (100), and before the defendant

had been put upon the stand, or could have been put upon the stand, as a witness in his own behalf, and forgetting also that when the defendant did testify on the subject it was on his direct examination, when he was meeting the testimony of Aspinwall already in the case at the instance of the Government.

The defendant was allowed to and did testify that he took the letters under circumstances which led him to believe that Aspinwall was willing that he should have them (197, 198); but this did not obviate the error of the court in refusing to allow him to testify that through his counsel he took that position *immediately* when the charge that he had improperly abstracted them was first made. Much less did it permit him to show to the jury, not by his evidence as to his intent merely, but by what he did, that his only object in taking the letters was to have them placed where the jury could see them when he should be brought to trial.

But, even if the matter had been first gone into on the cross-examination of the defendant, the rulings of the court on this point, it is submitted, would have been equally erroneous. A court, of course, has considerable discretion as to the extent to which a witness may be cross-examined about matters having no connection with the case on trial for the purpose of showing his "moral make-up." But when on cross-examination he has admitted that he did a certain act, it is reasonable and just that he should be allowed to state why he did it. This privilege should be accorded him even if the explanation does not amount to a legal defense. Suppose a witness on cross-examination admits that he had killed another man, may he not explain that he did it in self-defense, or in the heat of passion, or even in resentment of an injury done to him, which under the law would not in the least excuse his act, but which in the eyes of most men would have justified the deed and in the eyes of all men would have palliated it?

The inquiry is allowed only to help the jury to estimate

the weight of the witness' testimony in the case on trial. In that view, it is essential that they should know all the circumstances surrounding the transaction. Even the judge presiding in a criminal court takes the circumstances of an offense into consideration when measuring out the punishment to be given to a convicted criminal. And when a witness is accused of doing something that it is claimed tends to show what is his "moral make-up," are the jury to be deprived of the same information?

All the judges of the Court of Appeals agree that it was error for the trial court to refuse to allow Crawford to testify as to what his intention was when he took the letters from the files of the Fabrikoid Company. In the majority opinion, however (280-281), it is argued that since Crawford was allowed to testify that the reason for his going to Aspinwall's office was that he had been looking over his correspondence in order to be able to show everything, that "to have permitted him to testify as he offered in addition to the foregoing that he *took them with the intention of showing them to his counsel,* would have added little, if anything, to his explanation."

It was distinctly stated by Crawford's counsel when objection was made to his answering the question put to him by his counsel why he took the letters, that his counsel wanted "to have him state whether he took this evidence with the intent to suppress it or destroy it or with intent that it might be preserved to be presented to a jury when his day of trial should come" (197-198).

And immediately afterwards the defendant was asked whether when he took the letters he had the intention of destroying them, and that question was objected to, and the objection was sustained.

It was after an answer to these questions had been excluded that the witness was asked (199) what he did with the letters after he had taken them, and it was in reference

to that question that the offer was made to show that he brought them to his counsel in Washington.

All this appears still more clearly from what took place after the evidence in the case was closed, when counsel for the ~~Government~~ defendant moved to strike out so much of Aspinwall's testimony as related to the taking of these letters from his office. By reference to the record, pages 202 and 203, it will be seen that it was clearly understood by counsel and by the court that the court had refused to allow Crawford to testify that when he took the letters he did not intend to either destroy them or suppress them as evidence, and that his testimony to that effect was excluded because the court thought it was not competent.

Manifestly, it is no answer to these admittedly erroneous rulings that Crawford was allowed to testify (197) that when he called on Aspinwall at the time the letters were taken, he told Aspinwall that he had been looking over his correspondence "in order to be able to show everything." There is a difference as wide as the sea between telling a person who has the custody of a paper that it is wanted for the purpose of being shown to somebody not named, and the intention existing in the mind of the person making the statement as to what disposition he intends to make of the paper when he gets it.

But Mr. Justice Gould goes on to say that:

"This conclusion is strengthened by an examination of the two letters in question. They contained no statements which incriminated the defendant or tended in any degree to establish the conspiracy charged in the indictment. This fact would tend to negative the existence of a sinister intent on his part in taking the letters" (281).

Now the fact was and the record clearly shows that there was ground for the Government to argue that these letters, and particularly the letter of April 18th to Aspinwall's company, were incriminating. In the letter of the 18th of April, Crawford inquires of the company to which the letter is

addressed whether they had had a call from Lorenz on "the 17, 18 or 19 inst." (101). Lorenz testified that his first talk with Crawford was on June 4th, 1902 (122). Crawford, on the contrary, testified that he saw Lorenz in Washington on several successive days about the middle of April; that Lorenz was stopping at the Raleigh Hotel; and that he wrote the letters in question immediately after these April conferences with Lorenz (154-155-156). The books of the Raleigh Hotel where Lorenz stopped when in Washington that month of April showed that he arrived on the 16th and departed on the 18th day of April. As has already been shown, the great question of fact in controversy between Crawford, as a witness, and Lorenz as a witness, was as to whether they first met in April or in June, 1902. Notwithstanding the fact that as to this Crawford was corroborated by Polk and by Burnham, this letter of Crawford's furnished a strong ground of argument on behalf of the Government that Lorenz and not Crawford was telling the truth in respect of this matter, because Crawford in the letter seems to be inquiring whether Lorenz was in Newburgh, New York, on the 17th or 18th days of April, when, if his story was true, he must have been talking with Lorenz in Washington on those very days. Crawford's explanation of this discrepancy was that he wrote the letter at his house on a Sunday and by the calendar it appeared that it was misdated and the other dates in it confused (171). On this showing the Government might well contend, or a jury might think, that Crawford, finding this letter on the files of the Fabrikoid Company, and fearing it would be used against him as tending to show that he and Lorenz did not meet in April, undertook to suppress it, for fear it might fall into the hands of the Government.

In short, the case turned on whether the jury should accept as true the testimony of Crawford or the testimony of Lorenz; that depended on whether the jury believed their first meeting was in April or in June; and that again de-

pended on whether Crawford's letter of April 18th was written in good faith. It was therefore a *vital* point in Crawford's defense to show that he took this correspondence away so that it might be preserved as evidence; and as the ruling excluding his testimony on that point was admittedly erroneous, the verdict against him should be set aside on that ground alone.

The 11th Assignment of Error.

As to the refusal of the court to allow the defendant to show that the books and papers which he would not surrender to Trask he had previously offered to place in the hands of the District attorney.

Spencer Trask for the Government testified that after the charges against the defendant became public he tried unavailingly to get from the defendant the books and papers in his hands relating to the business of the Postal Device and Lock Company—*"books that the Government wanted"* (116, 117).

In reply, the defendant, as a witness in his own behalf, offered to testify that before Trask had made this request through his counsel he had offered to go to the District attorney's office alone whenever wanted and to produce there all the books and papers that he had relating to the business of the Postal Device and Lock Company, and to answer any questions that the District attorney might ask him in regard to the business of that company; that the witness had been informed by his counsel that he had complied with this direction; that the District attorney had not asked to see the defendant or his books, and that the defendant was thereupon instructed by his counsel not to allow anybody except his counsel to have or see any of his books or papers (164, 165).

The evidence of Trask as to the defendant's refusal to give *him* such books was admissible only for the purpose of indi-

cating the suppression of evidence in the criminal prosecution then impending. The jury trying this case had nothing to do with disputes between Trask and his employee, except as those disputes might tend to throw light on the guilt or innocence of the defendant in the case on trial. No objection was made to Trask's evidence, because the fact that the defendant refused to exhibit to Trask books which were in his possession, and which the Government wanted, relating to his transactions as the manager in Washington of the business of Trask's company might well be considered an indication that he feared they would in that way reach the District attorney and be used against him. It was therefore, it is submitted, clearly erroneous, as it must have been highly injurious to the defendant, to refuse to let him show to the jury that through his counsel he had previously offered to put those very books and papers in the hands of the District attorney.

It is true that in the course of Trask's examination on this point counsel for defendant remarked that there were "no such books." But this referred to the books usually kept at the main office of a corporation. Crawford, as the record shows, kept an account of the money which he received from the corporation—and also of his disbursement of the money which thus came into his hands (except of course his own salary, 169).

The 12th and 13th Assignments of Error.

As to the refusal of the court to allow the defendant to introduce in evidence the entries in his account book from page 24 to page 31 or even to exhibit to the jury the specific entries in that book relating to his financial transactions with Lorenz in connection with the contract of June 25, 1902, between the Postal Device and Lock Company and the Post-Office Department (169-171).

One of the main items of proof relied upon by the Government was the evidence tending to show that Lorenz paid

to Crawford a part of the moneys which he received from the Postal Device and Lock Company, and *that Crawford concealed these remittances from his company* (116).

The manner in which two of these remittances were made—one by draft payable to bearer and the other in cash by express—tended, of course, to show an intention to conceal the fact that Crawford was receiving money from Lorenz in this connection, and Trask, as a witness for the Government, had testified that he had never been informed that these payments were being made by Lorenz to the defendant (116).

It was admitted by Trask on his cross-examination that, as a general thing, Crawford, under instructions from Trask, communicated with Chance (Trask's private secretary, who was the president of the company) in regard to the affairs of the Postal Device and Lock Company (112). In the ordinary course of business, therefore, if Crawford had communicated to anybody representing the company the fact that he was receiving these payments from Lorenz, the communication would have been made, not to Trask, but to Chance. Chance was in England at the time of the trial (112).

The defendant testified that in the book in question he kept an account of all the moneys which he received from the Postal Device and Lock Company and of the manner in which it was expended (169). The pages of the book which were first offered in evidence, and which the court excluded, contained all the entries in the book during the period covered by the evidence offered in behalf of the Government (169, 171, 259). The specific entries offered in evidence after the court had excluded these items as a whole were those which showed the two payments to Lorenz of $5,441.35 on October 21, 1902, and $992.90 on December 22, 1902, together with the marginal entries in pencil opposite these items: "Paid W. G. C. 25% rebate due P. D. & L. Co." (171, 172, 260, 263).

It was stipulated in the bill of exceptions (172) that this

original book of account should be presented to the Court of Appeals by counsel for the defendant. The nature of these entries will be more readily seen by an inspection of the book than from the printed copy at the end of the record in this case, because in the printed record these marginal entries are carried to the bottom of the page instead of being placed where they are found in the original. It is true, of course, that the marginal notes indicating that Lorenz had paid the defendant 25 per cent. of the amounts received by him *might* have been placed there at a later date than the rest of the entries to which they relate. But the defendant testified positively that the book as it is, with the entries as they are, was submitted to Chance after the book was finished, and that when it was returned the check-marks which Chance was accustomed to make were opposite the respective items(169, 170). If this was true, then the defendant had not concealed from his company the fact that he was receiving from Lorenz one-fourth of the amounts the company was paying to Lorenz. And, with great deference to the learned judge before whom this case was tried, it is submitted that the constitutional guarantee to accused persons of trial by jury means that the jury and not the judge are to pass upon the truthfulness of a witness' testimony. What becomes of that guarantee if the judge may keep from the jury anything which *he* thinks may not be true.

"What is there to show," inquired the court," "that this book has not been altered since he made the entries?" (171). "I am in doubt," again said the court, "as to whether you are entitled to have the book in evidence, on the ground claimed for it, that is, that it was submitted to Chance, *and on account of the condition of the book,* will resolve that doubt against you" (171). All this simply tends to show that the court was thinking of this tender of evidence as an effort to prove an account by unsatisfactory evidence. But the only purpose of the offer, as distinctly stated to the court by defendant's counsel, was to show "that the fact that he

"(the defendant) was receiving payments from Mr. Lorenz "back of this contract was communicated to Mr. Chance as "the agent of Mr. Trask and the president of the company" (170, 171). It was not of the slightest consequence when the entries were made or whether they had been altered after they were made, provided they were shown to Chance as they stand. The defendant had sworn that they were shown to Chance as they stand long before the Post-Office Department investigation began. This gave the defendant the absolute right to have them shown to the jury, subject to any argument that might be made by the District attorney from their appearance and subject to the cross-examination of the defendant as to how and when they were made.

In dealing with this exception, Mr. Justice Gould, speaking for the Court of Appeals, says (282):

"The book was offered as corroborative of the testimony of the defendant that he had informed Mr. Chance verbally of the payments. The question involved is covered by the ruling of this court in Gurley *vs.* McLennan, 17 App., 170, where it is said: 'We know of no case, and we find no case cited, in which either books of accounts or other memoranda were admitted in evidence, when it appeared that there were living witnesses present cognizant of the transaction sought to be proved and fully competent to testify in regard to it.'"

The reasoning of the learned justice seems to be as follows: A has done a certain act of which his duty requires him to inform B. He produces a writing which contains that information and swears that he showed that writing to B. The writing is then offered in evidence, but must be excluded because A has testified as to doing the act referred to in the memorandum and cannot corroborate his statement by the memorandum itself!

With all respect to the learned justice who delivered this opinion, it is a little difficult for the undersigned to appreciate the force of the argument. There was no question in the case whether Crawford had received payments from

Lorenz. Lorenz had sworn that he made such payments; the written evidence of the payments had been produced and put before the jury; and Crawford had admitted that he got the money in the way stated by Lorenz and shown by the documentary evidence. But the Government had produced Trask and had him testify that he did not know that Crawford was receiving these payments from Lorenz until after the Post-Office investigation began. He admitted that in the ordinary course of things information of that character if communicated to the Postal Device and Lock Company by Crawford would have been communicated to the president of the company, Chance, and not to Trask directly. Crawford says: "I did give to Chance, and left in his hands for a considerable time these books which contain entries showing that Lorenz had returned to me a part of the moneys which he received from the Postal Device and Lock Company." His counsel thereupon offers the books and the entries separately in evidence, and the court excludes them. It might just as reasonably have excluded his testimony that he verbally informed Chance of these payments.

The 14th and 15th Assignments of Error.

As to the refusal of the court to allow the defendant to give evidence to the jury tending to show that on behalf of the Postal Device and Lock Company he, in good faith, expected to furnish shoulder straps with the satchels (161, 162), and its refusal to instruct the jury that if in that regard the defendant acted in good faith, the fact that the shoulder straps were not furnished with satchels of classes A and C should not be considered as evidence of the guilt of the defendant under indictment numbered 24688 (210).

The Government having proved that by the contract between the Postal Device and Lock Company and the Post-Office Department shoulder straps were to be furnished with

satchels of classes A and C; that no straps were furnished by that company with any of the satchels of those classes, and that the Government had, nevertheless, paid the full contract price, it would seem to be plain that it was competent for the defendant to give evidence to the jury tending to show that he was not a party to any agreement with Machen or Lorenz to defraud the Government in this way. He was allowed to testify, and did testify without objection, that down to the early part of August, 1902, he expected that straps would be furnished with the bags; that at that time Machen told him the Government would furnish the Lamb strap for the satchels and make a proper corresponding deduction from the amount due the contractor at the end of each fiscal year (159); that in his dealings with the firm of William H. Wiley & Son Company in reference to the manufacture of the satchels he was endeavoring to arrange for that company to supply the straps as well as manufacture the bags, and that he continued to deal with the latter company in that way down to the 30th day of June, 1902, when he was notified by it that it could not supply a strap like the sample furnished by the Post-Office Department to the contractor because the buckle going with the strap and called the Lamb buckle was patented (108, 159). The defendant then offered to prove that during the same period he, on behalf of the Postal Device and Lock Company, was in correspondence with a number of other firms, seeking bids from them for the manufacture of shoulder straps, or bags and shoulder straps, his counsel stating that he offered that evidence for the purpose of showing that the defendant was trying in good faith to get bids for the manufacture of bags and shoulder straps (162). But the court excluded all the letters on the ground that neither "the *bona fides* of the contract with the Government" nor "the question of the good faith of the defendant with respect to the quality of the material used in filling the contract" was involved—that the only fraud claimed

was "the agreement to vest a Government officer with an interest in the proceeds of a valid contract" (162).

Nevertheless, the court refused to grant the defendant's eighth prayer, to the effect that if the jury found that when the contract with the Government of June 25, 1902, was entered into the defendant in good faith expected and intended that his company should furnish shoulder straps with the satchels of class A and class C, and that afterwards Machen of his own motion directed that the Lamb strap should be used with the satchels delivered under the contract; that it was impossible for the Postal Device and Lock Company or Crawford as its general manager to obtain the Lamb strap; that the Lamb strap was accordingly furnished by the Government with the understanding with Crawford, as the general manager of the Postal Device and Lock Company, that at the end of each fiscal year a reasonable and proper deduction should be made in the amounts paid to the company under the contract on account of the satchels of classes A and C, and that in this regard Crawford acted in good faith and not with the intention of defrauding the Government in any way, then the jury was not to consider the fact that shoulder straps were not furnished with the satchels as evidence of the defendant's guilt under indictment 24688 (210).

It must be remembered that when this instruction was refused the only count of indictment numbered 24688 which was submitted to the jury was the first count, which in substance charged merely that Crawford was a party to an agreement with Lorenz and Machen by which Lorenz was to receive money from the Postal Device and Lock Company and to pay over certain proportions thereof to Machen and Crawford.

In the majority opinion of the Court of Appeals this ruling was sustained for the same reason given by the trial judge. Says Mr. Justice Gould (282):

"There was no contention by the Government that the contract * * * was fraudulent * * * in any other respect than the unlawful division of the profits accruing therefrom."

Yet in fact the defendant was then on trial under indictment 23865 (1 to 6) for defrauding the Government by presenting and collecting vouchers for bags and straps when the straps were not furnished. As to that indictment the court charged the jury thus (221):

"Therefore in that regard if you find that McGregor was a person in the service of the United States charged with the approval in any respect of bills against the United States concerning payments for satchels and shoulder straps under this contract * * * and that Crawford presented to McGregor for approval and payment a claim against the Government for shoulder straps that had not been furnished to the Government, and at the time of so presenting such claim Crawford knew that the straps had not been furnished, *then he is guilty with respect to that particular claim.*"

It is true that the verdict of guilty as to the counts of this indictment 23865, upon which the defendant was convicted, was set aside by the court under the motion in arrest of judgment because that indictment was held to charge no criminal offense, but it is manifest that great injury may have resulted to the defendant, and probably did result, from excluding from the jury competent evidence which might have led them to acquit him as to that indictment. It was almost a matter of course that if they found the defendant guilty under that indictment they would find him guilty of the conspiracy charged in indictment 24688.

But at all events the defendant was entitled to have the instruction referred to in this assignment of error given to the jury because that was addressed only to indictment 24688. If Crawford did in good faith follow Machen's instructions in regard to the shoulder straps and honestly

intended and expected that a proper deduction from the contract price would be made because the straps were to be furnished by the Government, the fact that they were not furnished by the contractor could have had no tendency to prove that *he* agreed that Lorenz should pay money to Machen.

The 16th Assignment of Error.

As to the ruling of the court that in order to contradict a witness by proving that he has made out of court statements inconsistent with his testimony in court, it is necessary to prove by the contradicting witness not the substance merely, but the exact words of the alleged inconsistent statement (151, 152).

It cannot be necessary in this case to urge upon the court the importance to the defendant in the trial below of being allowed to give to the jury any competent evidence tending to show that Lorenz was not to be believed. Lorenz admitted that in the latter part of 1903 he and his counsel were in conference with Crawford and his counsel in reference to their defense under these indictments (132). He further admitted that afterwards, in or about the month of January, 1904, he had gone to the District attorney's office with his own counsel and made a statement to that officer; that, in common parlance, he had then turned State's evidence (124). The evidence offered by the Government tended to prove very strongly, if not conclusively, that Lorenz had turned over to Machen a certain proportion of the moneys which he had received from the Postal Device and Lock Company as he received them.

The jury certainly could not fail to realize that Lorenz and Machen might be guilty and yet Crawford might be innocent. If they could see that Lorenz had ascertained that Crawford would not help support any theory of the de-

fense which Lorenz might concoct for the purpose of helping him (Lorenz) to an acquittal, they might very readily reach the conclusion that he went to the District attorney's office for the purpose of trying to make terms by inventing a story that would inculpate Crawford and to a large extent exonerate himself. The assignment of error now under consideration grows out of an exception taken by the defendant to the refusal of the court to allow him to prove that before Lorenz went to the District attorney's office he (Lorenz) had endeavored to get Crawford to agree at the trial of their case to tell a lie in their joint defense.

Upon the 15th day of October, 1902, there was paid to the Postal Device and Lock Company for 5,000 satchels furnished the sum of $15,800 (89, 92). A few days afterwards the defendant, for his company, sent to Lorenz $5,441.35, being that part of this $15,800 which was due to Lorenz under the contract between the latter and the Postal Device and Lock Company (95). Shortly afterward Lorenz sent Crawford $1,465.34 by a draft payable to bearer (163). The price paid by the Government for the Lamb strap was 39½ cents (239). Under the second contract between Lorenz and the Postal Device and Lock Company Lorenz was to furnish the shoulder straps (86), but did not do so. If, therefore, he had been charged 39½ cents for each of the 5,000 straps not furnished, the total amount chargeable to him on that account would be $1,975. Under his contract with the Postal Device and Lock Company Lorenz was to be charged with the necessary traveling expenses of the company (86), and at the time the remittance of $5,441.35 was made to him there had been deducted from the amount due him the sum of $508.65 (167). If this latter sum be deducted from $1,975, the remainder is $1,466.35—within one dollar of the amount remitted to Crawford by Lorenz by the bearer draft. It is obvious that it might have been claimed that this payment back to Crawford was made because Lorenz had not furnished the straps and to enable Crawford to pay back to the Government the amount which it had paid for the Lamb

strap. This being the state of affairs, Lorenz on his cross-examination was asked whether in a certain conversation with James K. Polk in 1903, in Judiciary square, he had not told Polk "*in substance* that it would be well for Crawford to testify at the trial that $1,465 and some cents was sent back to him as a repayment for the straps, as a payment on account of the straps for those five thousand bags" (131). This question was answered in the negative. When it was attempted to contradict him by the testimony of Polk, the latter was asked "whether in a conversation with said Lorenz in Judiciary square in 1903 Lorenz said to him, the witness, '*in substance*' that it would be well for Crawford to testify at the trial that the $1,465 and some cents was sent back to him as a repayment for the straps, as a payment on account of the straps, for those five thousand straps." But the court sustained an objection to this question *solely* on the ground that the words "in substance" should not be used—"that counsel should put the *exact words* in the witness's mouth" (151-152). The witness was then asked the same question, omitting the words "in substance," and very naturally he said that he could not say whether those were the exact words Lorenz used or not.

So far as we have been able to ascertain, after diligent search in text books and reported cases, this ruling is without a precedent. A contrary conclusion was reached by Chief Justice Shaw in Gould *vs.* Lead Co., 9 Cush., 338.

So far from requiring the exact language of the former contradictory statement, the rule seems to be that all that is necessary is to sufficiently identify the occurrence to enable the witness to give his version of it. It is somewhat difficult to see why it should ever have been required to call the attention of a witness to his alleged contradictory statement at all, inasmuch as it would be much more satisfactory to him (and to the party who calls him) to have him called in reply after the evidence against him has been introduced.

And indeed after a witness has denied the alleged incon-

sistent statement, and evidence as to it has been given by the other side, he may be recalled to tell what he *did* say on the occasion in question (Appeal of Harrison, 48 Conn., 202; Hoover *vs.* Cary, 86 Iowa, 494; McMurrin *vs.* Rigby, 87 Iowa, 18; State *vs.* Winkley, 14 N. H., 480; Henderson *vs.* State, 70 Ala., 29).

Prohibiting one party from giving evidence as to an occurrence till his adversary has been heard is an exception to the general rules of evidence, and it should not be strained beyond its legitimate sphere, which is simply to warn the witness that it is claimed that he has made a different statement out of court and so give him an opportunity to explain.

The effect of requiring the exact language of the prior statement to be given in most cases would deprive the impeaching party of the benefit of the impeaching testimony altogether. A truthful witness would do as Polk did in this case—say it was impossible for him to give the exact words. If he pretended to remember the precise words used, he would impeach himself instead of the adverse witness.

The Court of Appeals does not attempt to sustain this ruling on the ground that the exact language must be given in such cases. Departing entirely from the theory upon which the trial court acted, Mr. Justice Gould holds that the evidence of Lorenz as to this conversation with Polk could not be contradicted, because it was collateral matter gone into on his cross-examination, and that what it was claimed he said to Polk showed no bias against Crawford, but on the contrary, a friendly disposition towards him!

The answer to this is that by the excluded evidence and the evidence referred to in the next succeeding assignments of error the defendant was proceeding to show that Lorenz had gone to the District attorney because he found that Crawford would be no party to any scheme to save Lorenz by uniting with him in devising and testifying to a false defense. Whether Lorenz was a Government witness because he was a repentant sinner or because he wished to be

revenged on Crawford was a question concerning his bias, the determination of which by the jury would necessarily have much to do with the weight to be given his testimony.

It would have been entirely competent for the defendant to prove as a part of his case-in-chief any fact which would tend to show that Lorenz had unsuccessfully tried to get him to unite in manufacturing a defense before he, Lorenz, went to the District attorney. Every authority cited by Mr. Justice Gould in this connection will be found on examination to sustain our contention on this point. "Bias or prejudice" in a witness Mr. Justice Gould admits is not a collateral matter at all. What could more clearly indicate bias on Lorenz's part against Crawford than evidence that Lorenz was preparing to defend the charge against him until he learned that Crawford at their approaching trial would give testimony which with the checks and drafts given by Lorenz to Machen (which Lorenz must have known the Government had obtained) would inevitably lead to the conviction of Lorenz, and that therefore he put himself in communication with the Government and proceeded to try to punish Crawford and save himself?

The 17th, 18th, 19th, and 20th Assignments of Error.

As to the rulings of the court refusing to allow the defendant to testify to certain statements made by him at a conference between Lorenz and his counsel and the defendant and his counsel before Lorenz went to the District attorney's office and endeavored to save himself by implicating Crawford (168), and its refusal to allow him to testify that about the same time Lorenz had vainly tried to get from him the contract between Lorenz and the Postal Device and Lock Company.

The conference in question was held long before Lorenz got into communication with the District attorney (124, 133). The defendant's counsel offered to prove by him that at that

conference Crawford, in the presence of his counsel, fully disclosed to Lorenz and his counsel what he intended to testify to, and fully stated his whole understanding of the facts pertinent to the defense. In determining the question of Lorenz's credibility, it was all-important for the jury to know what were the influences which operated upon his mind when he went to the District attorney's office. Knowing, as he did, when the conference in question was held that he had turned over to Machen a part of each of the payments made to him by the Postal Device and Lock Company, and that these payments to Machen had been made through the banks, so that they could be uncovered, he could see that he had small chance of escaping unless Crawford would unite with him in setting up and testifying to some fictitious defense. If he learned that Crawford was going to tell the truth, and that Crawford's testimony, taken in connection with the documentary evidence which the Government would get from the banks, would convict him (Lorenz) and Machen, then it would be natural that he should go to the Government and attempt to throw the responsibility on Crawford. But the court would not allow Crawford to tell the jury what took place at that conference.

The significance of this evidence is obvious. The trial of these cases was about to begin. Lorenz and Crawford, with their respective counsel, met to discuss the defense. Crawford first tells his story. Lorenz and his lawyer then retire for consultation. When they return Lorenz refuses to say anything and the parties separate. Lorenz is then tried and convicted in the Groff case (124). While that case is pending in the appellate courts and he is out on bail, he goes to the District attorney and tells him that Machen and Crawford were the real original conspirators, and that they seduced him.

It was of the utmost importance, under these circumstances, that the jury should know what it was that Crawford said at that conference.

Lorenz on his cross-examination, without objection from the Government, gave his version of what occurred at that time. He said that he did not make any statement after Crawford had finished his story, because he thought the defendant was deceiving his attorney (133). As bearing upon Lorenz's credibility and as explaining why Lorenz gave up trying to get Crawford to join him in manufacturing a defense in their joint interest and went to the District attorney for the purpose of dragging Crawford down, the testimony of Crawford as to what he said to Lorenz on the occasion in question should have been allowed to go to the jury.

So as to the evidence that Lorenz vainly tried to get Crawford to surrender to him the contract between Lorenz and the Postal Device and Lock Company.

All this excluded testimony taken together, if the jury had been allowed to hear it, certainly might have satisfied the jury that Lorenz was trying to get even with Crawford for not helping him to break the net in which he found himself entangled. That is bias, and bias is not collateral.

The 21st Assignment of Error.

The refusal of the court to give to the jury defendant's 13th prayer, to the effect that payments made by Lorenz to Machen were not to be considered against the defendant unless the jury should be satisfied by the evidence beyond a reasonable doubt that before they were made the defendant had agreed with Machen and Lorenz, or one of them, that such payments should be made by Lorenz out of the money received by him (212).

It was proved by the Government and admitted by the defendant that the Postal Device and Lock Company, pursuant to a contract with Lorenz, brought about largely by the defendant, paid to Lorenz a part of the proceeds of

the contract between that company and the Government. It was also proved by the Government and admitted by the defendant that the latter received from Lorenz a part of the money so paid to Lorenz. Obviously with these facts by themselves the Government had no concern. Had the evidence stopped there, the defendant would not have been called upon to reply to the Government's case at all. But this evidence was introduced as tending with other facts to prove that Crawford had agreed with Lorenz and Machen, or one of them, that Machen should receive a part of the money that was to be paid to Lorenz. The whole case against Crawford depended upon the question whether he knew that Machen was to be a party to the division. How could he be affected by the fact that Lorenz divided with Machen if he had nothing to do with bringing that division about?

In this prayer the court was asked to tell the jury that to consider the division with Machen against the defendant they must be satisfied *beyond a reasonable doubt* that he had agreed to it.

It was *the* essential element of the charge in this count 1 of the indictment 24688 that Crawford agreed that a part of the proceeds of the satchel contract should go through Lorenz to Machen. While the authorities differ as to whether every item of circumstantial evidence relied upon by the prosecution in a criminal case must be established beyond a reasonable doubt, they all agree that each essential element of the offense charged must be so proved.

In sustaining the ruling of the trial court as to this instruction the Court of Appeals merely says (289):

"Had this prayer been granted the jury would have been forbidden to consider the fact that defendant's associate, Lorenz, was using part of the proceeds of their contract with the Government to corrupt a Government official, as a circumstance from which, in connection with others, they might deduce an agreement to divide said proceeds. It was properly refused."

It has already been seen that the court excluded evidence of Crawford's good faith in the matter of the shoulder straps on the ground that the only fraud charged was that the defendants had conspired "to defraud the United States" by vesting in a Government official an interest in a contract which it was his duty to execute. Yet the court refused to tell the jury that if Crawford did not so agree the fact that Lorenz and Machen alone entered into such an arrangement was not evidence against Crawford.

It is of course true that, where there is a conspiracy, what any of the parties to it do in carrying it out is the act of all. And if it is assumed that Crawford was guilty as charged, then what took place between Lorenz and Machen could be used against Crawford. But if his guilt is assumed evidence is not required. Since, however, his innocence is presumed what his codefendants did without his concurrence could not affect him.

The 22d Assignment of Error.

The refusal of the court to grant the defendant's 15th prayer, to the effect that payments made by Lorenz to Crawford were to be considered in respect to indictment 24688 only in so far as such payments might tend to throw light upon the question whether the defendant was a party to the alleged agreement between Lorenz and Machen that a part of the money received by Lorenz should be paid to Machen (212).

If, as the Government claimed at the trial, Crawford, the agent of the Postal Device and Lock Company, under a secret agreement with Lorenz, received back from Lorenz a part of the money paid Lorenz, with intent to keep it for his own benefit, the company, upon ascertaining the facts, could have called upon him to account to it for the money so paid him. If, as Crawford claimed, he let Lorenz believe that he was taking the money for his own private benefit, but in fact

intended to account to the company for it, and did in fact inform the company of the payments to him, then he could not be charged with injuring even his principal. But in neither event, without something more, could it be contended that he defrauded, or agreed to defraud, the Government. These facts were admissible solely because they were supposed to tend to prove Crawford's alleged agreement that a Government official was also to receive a part of the money paid to Lorenz. That the payments by the Company to Lorenz were competent for that purpose cannot be questioned. But it is difficult to see how the payments by Lorenz to Crawford can have any tendency to prove that Crawford knew that Lorenz was dividing with Machen. But however that may be, the jury had no right to consider the payments by the company to Lorenz or the payments by Lorenz to Crawford for any other purpose than as they might, with other evidence, tend to show that Crawford had agreed that Lorenz should divide with Machen.

Here again the Court of Appeals gets rid of the objectoin by assuming guilt. "As an overt act"—says that court (289)—"the fact of such payments was admissible against all the parties to the conspiracy."

The 23d and 24th Assignments of Error.

The refusal of the court on motion of the defendant to discharge the jury from the further consideration of the case when counsel for the Government, in his argument to the jury, told them that Machen had pleaded guilty, and in refusing again to discharge the jury when counsel for the Government, after the court had held this remark to be improper, repeated it in a more offensive form (205, 206, 207).

When the jury was about to be called to try this defendant the first time, Machen was brought into the court-room by counsel for the Government, and plead guilty under the

indictment numbered 24688 (74). This was months before the trial referred to in this record. He was at once sentenced to imprisonment in the penitentiary for two years, to take effect after the expiration of a similar term which he was serving in the Groff case (74). Whether this was done under an arrangement between Machen and the Government that Machen was not to be prosecuted further in other cases against him does not appear in the record in this case. Whatever may have been the motive for this proceeding, it did not bring about a conviction of the defendant, because in that trial the jury disagreed (75).

At the second trial, the proceedings in which are shown by the record in this case, a jury sat which presumably did not know that Machen had pleaded guilty in one of the cases in which the defendant was on trial. During the whole course of the trial no word fell from the lips of counsel or witness in the presence of the jury to inform them of that fact. But the counsel for the Government in the closing argument to the jury undertook to influence their judgment by giving them to understand that, since Lorenz had testified that he was guilty and Machen had pleaded guilty, the defendant must be guilty, too. And this remark had reference specially to indictment 24688, under which alone the defendant stands convicted, because it was in that case that Machen had pleaded guilty.

It was not incumbent upon the defendant in this situation to move to have the jury discharged from the further consideration of the case. He might, of course, have taken his exception and have had the benefit of it without making such a motion (Construction Co. *vs.* Holtzman, 27 App. D. C., 138). But it was his right to ask that the jury be discharged, even though he might thereafter be subjected by the misconduct of counsel for the Government to be harassed by another trial. Lorenz *v.* U. S., 24 App. D. C., 337.

The court having instructed the jury to disregard the

statement that Machen had pleaded guilty, the counsel for the Government repeated the remark by saying: *"It is a fact which you all know,* and it has been repeated a dozen times in this case." The repetition of the averment under such circumstances is as extreme a case of misconduct on the part of a prosecuting officer in the way of a statement made to a jury in argument as is to be found in any recorded decision.

It has almost uniformly been held that where a prosecuting officer, after being warned by the court that he has made an improper statement to the jury, repeats it, a conviction will be set aside. And frequently a single utterance has had the same effect.

Severe comments on defendants' witnesses were made, and on their character, which were unsupported by the evidence. Counsel for defendants filed an affidavit of them, and presented same to the court with a written request to withdraw a juror and continue the case because of such remarks. The court below refused to do this. *Held,* error, the appellate court observing:

"We can discover nothing to palliate them in the least degree, and inasmuch as there was no other efficacious remedy available to correct the mischief done, it was the plain duty of the court to withdraw a juror and continue the cause. Many judges are in the habit of doing this upon proper occasion, and that practice deserves to be widely extended, so that counsel who indulge in the habit of making such comments may be properly admonished that they cannot do so except at severe cost to their clients and themselves."

Holden *vs.* Penna. R. R. Co., 169 Pa. St., 1-18.

Counsel commented that during the trial of the case the "violence of the defendants in killing F. was exemplified here in this court-room—that during the trial of this case

they couldn't keep their mouths shut, but threatened him or his assistant by making threats in the court-room."

The court then instructed counsel to abstain from making any remarks upon any matter not shown by the evidence, and instructed the jury to pay no attention whatever to any statement of fact not warranted by the evidence, and not to take into consideration any statement of counsel about any fact not shown by the evidence.

The prosecuting attorney then said: "I expected when the facts came out the galled jade would wince."

Held, the court below did all in its power to dislodge from jurors' minds any impression made by above statements, but that the error committed was not removed from the case. There was no withdrawal of the facts so stated, but, on the contrary, after the court had directed the jury to disregard them, the counsel in effect repeated their truth by saying: "I expected when the facts came out the galled jade would wince." The accused, therefore, did not have a fair trial, and the judgment should be reversed.

People *vs.* Ah Len, 92 Cal., 282 (1891).

Trial of defendant for whipping his daughter. Prosecuting attorney said in his argument that defendant had been tried before a justice of the peace where he resided and had been convicted, and "they could see from that what the jury thought of the case." The defendant objected to this statement, and the court sustained his objection; thereafter the prosecuting attorney repeated the statement. He also made another improper statement. No evidence had been adduced to support either statement.

Speaking of the prejudicial nature of counsel's remarks, &c., the court says:

"His repetition of them after the court had sustained defendant's objections was calculated to impress them upon the minds of the jury, and cause them to attach more importance to them than they otherwise would, and in the con-

flict of the evidence were calculated to cause the jury to decide against the defendant," &c.

Willyard *vs.* State, 78 S. W. Rep., 765 (Supreme Court, Ark.).

Remarks by plaintiff's counsel as to plaintiff helping to pay a tax to aid defendant's railroad, as to which there was no evidence in the case. The trial judge rebuked counsel thus:

"The counsel know better and know that they should talk about the law and testimony in the case."

Thereupon counsel said:

"I then stated to you the position of my client * * * I did not intend and don't now urge anything upon you that you are to consider, except the questions that arise upon the issue that is presented to you to try."

On appeal the court said:

"The remarks of the plaintiff's counsel, to which exceptions have been taken, were very objectionable, as well after he had been reprimanded by the court as before, and we are inclined to think that we should reverse the cause on that ground, if there was no other error. As it is it becomes unnecessary to consider that question, except to suggest the impropriety of its repetition."

Bremmer *vs.* R. R. Co., 61 Wisconsin, 114, 116, 118.

In his closing argument counsel for plaintiff said that but for the interference on the part of M. (defendant's superintendent) with a witness he had no doubt she would have been in court; that the methods employed to keep witnesses away were reprehensible in the extreme; that but for this tampering with the witness he believed she would have been present. There was evidence to support such a charge. The defendant's counsel protested against this statement of plaintiff's counsel, and the court said he did not think counsel was authorized to make the statement with-

out evidence; whereupon plaintiff's counsel withdrew the statement, but, continuing, said to the jury:

"At all events, gentlemen, I believe before high heaven that if Mr. M. had not paid this visit to our witness this morning she would have fulfilled her promise and would have come to court and testified in the case."

On appeal the judgment in favor of the plaintiff was reversed, the court saying:

"We think the court erred in refusing to grant a new trial on this ground. We think the remarks of counsel for the plaintiffs in his concluding speech to the jury were calculated to and doubtless did prejudice the minds of the jury against the defendant. * * * Although, when corrected by the court, counsel withdrew the statement, he asserted afterwards that he 'believed before high heaven' that if M. had not paid this visit to his witness, she would have fulfilled her promise and have come to court and testified in the case. * * * Judgment reversed."

A. & S. R. R. Co. *vs.* Randall, 85 Ga., 297, 315, 320.

Counsel, in his closing argument, said, speaking of the testimony of a witness: "And that is not in accordance with what he testified to on the former trial." Exception was made to this remark, and thereupon counsel said: "I withdraw what I said and ask you not to consider it." Opposing counsel said: "You must do more than that, you must say it is not true." Counsel then said: "I shan't tell an untruth." Thereupon exception was made to that remark. Counsel making the remark then said: "I appeal to the court and ask to have this fairly understood, and shan't proceed until it is." The court then called his attention to a New Hampshire case, and reminded him that he should withdraw the remark, apologize to the jury for having made it, and request them not to consider it. Counsel thereupon did so. The verdict was in favor of the plaintiff whose counsel had made the objectionable remark.

In reversing the judgment the Supreme Court of New Hampshire said:

"The rule that a verdict will be set aside for unwarranted remarks of counsel in argument to the jury, unless it appears that the verdict was not affected thereby, is established by repeated decisions of this court too recent and numerous to need citation. Any statement or assertion of a fact material to the issue, of which there is no evidence in the case, is outside the limits of legitimate argument, and is sufficient cause for setting aside a verdict in favor of the party chargeable with the error, unless it appears that the jury were not affected by it. * * * Notwithstanding the withdrawal of the statement upon the objection of the defendant, and the counsel's apology and request to the jury to disregard it, there is nothing indicating that the effect was removed from the minds of the jury. In the colloquy that followed the objectionable statement the plaintiff's counsel affirmed its truth when the defendant's counsel insisted that he should say it was not true, by replying that he should not tell an untruth. The force of the unwarranted remark was thereby intensified, and the statement in the case that the jury fully understood that the remark excepted to was to be disregarded is not equivalent to a finding that the verdict was not affected by it."

The verdict was set aside on this ground.
Robertson *vs.* Madison, 67 New Hampshire, 205-207.

The prosecutor in argument to the jury commented on the fact that the defendant had not brought any witnesses to prove his good character. These remarks were permitted by the trial judge over objection of the defendant's counsel. Afterwards the jury was instructed not to consider these remarks.

The judgment and sentence were set aside by the Supreme Court of Michigan, that court observing:

"The error was not cured by the court afterwards instructing the jury that they should not consider such argument."

The court then cites 123 Ill., 333, where counsel refused to testify in his own behalf, and quotes from that case (Quinn *vs.* People) as follows:

"How much did it avail for the court to tell the jury that the remarks of counsel were improper? His words had found a lodgment in the minds of the jury, spent their force and subserved their purpose for which they were uttered, and it were idle to talk about removing their effect upon the jury by a mere declaration from the court that they were improper. As well might one attempt to brush off with the hand a stain of ink from a piece of white linen. One, in the very nature of things, is just as impossible as the other."

The court then goes on to say:

"It is undoubtedly true that these words were more potent and effective and lasting, falling from the lips of one who was at the very time of their utterance, occupying the honorable and high position of a circuit judge in an adjoining circuit."

People *vs.* Evans, 72 Michigan, 367, 382, 383.

Counsel, in the closing argument to the jury, commented on facts not in evidence, such as the appellant's connection with a certain railroad company, and the wealth and power of the company as a great corporation, and the defendant's ability, from his connection with it, to pay any judgment which might be rendered against him. The appellant took his exceptions.

Says the court, referring to cases cited by appellant:

"All of them support the rule now adopted by this court that it is error sufficient to reverse a judgment for counsel, against objection, to state facts pertinent to the issue and not in evidence, or to assume *arguendo* such facts to be in the case when they are not. Some of the cases go further and reverse judgments for imputation by counsel of facts not pertinent to the issue and calculated to prejudice the case" (citing 41 New Hampshire, 317; 75 North Carolina, 306; 49 Indiana, 33).

"There are cases in conflict with those which support this rule; but in the judgment of this court the rule is supported by the weight of authority and by principle. Doubtless the circuit court can, as it did in this case, charge the jury to disregard all statements of fact not in evidence. But it is not so certain that a jury will do so. Verdicts are too often found against evidence and without evidence to warrant so great a reliance on the discrimination of juries; and without notes of the evidence it may be often difficult for juries to discriminate between the statements of fact by counsel following the evidence, and outside of it. It is sufficient that the extra-professional statements of counsel may gravely prejudice the jury and affect the verdict * * * It is the duty of the circuit courts in jury trials to interfere in all proper cases of their own motion. This is due to truth and justice, and if counsel perseveres in arguing upon pertinent facts not before the jury, or appealing to prejudices foreign to the case in evidence, exception may be taken by the other side, which may be a good ground for a new trial, or for a reversal in this court. It is with regret that the court is obliged to hold that both appear to have been done in this case. It was no fair inference for argument that because the appellant was a servant of a wealthy railroad company, he himself was wealthy; or that the jury should take into consideration in assessing damages the power, wealth and influence of the corporation. * * * *And it is, perhaps, not to be regretted, that the question has first come here in the case of an eminent member of the bar; a gentleman of high character, personal and professional, known to every member of this court; whose professional ability needs no adventitious aid, and who probably fell into this error casually and inadvertently. His professional standing shields him from personal censure, while it will give emphasis to the rule laid down.* The judgment is reversed and the case remanded for a new trial."

Brown *vs.* Swineford, 44 Wisconsin, 282, 292, 294-'5.

In a prosecution for a felonious assault defendant's counsel said: "Defendant is a man of good character—not a witness has been produced to show his character was not good." In his closing argument prosecuting attorney said that defend-

ant had a right to bring in his neighbors to prove his good character, but that "the reason he did not bring them in to so testify was because he knew they would not so testify." The court, after objection and exception by defendant's counsel, said that the line of argument was not fair; that counsel had no right to comment on the fact that defendant did not offer evidence of his good character, "and the jury will disregard that part of Mr. Skinker's argument." No witness had been offered on the character of the defendant. Held, that the charge of the judge did not cure the error, and that the excuse that defendant's counsel had said his client was of good character was not a valid one—*i. e.*, did not palliate the breach of the prosecuting attorney. Says the court:

"If there was no evidence of character (and there was none) he should have objected to the statement, and requested that the defendant's counsel be required to keep within the evidence."

The court also says:

"Error is presumptively harmful and it devolves upon the party who commits it to show that it could not possibly have resulted in injury. Especially is this true when the life or liberty of the citizen is at stake. We do not think the oral charge of the judge had the effect of extracting the poisonous virus which had been injected by this statement into the minds of the jury."

The judgment was reversed.

State *vs.* Shipley, 174 Mo., 512, 515, 517.

In a Kentucky case—a damage suit—negotiations had been on foot to effect a compromise, defendant having offered to compromise. Plaintiff's counsel tried to get this fact in evidence several times, but the court excluded such evidence. In his argument to the jury plaintiff's attorney stated to them that he held in his hand a letter from defendant's president acknowledging defendant's liability and offering

to settle but for the fact that the company that insured defendant would not settle, and he then asked permission of defendant's counsel to read the letter. Defendant's counsel objected to this line of argument, and the court told the jury to disregard it. The attorney for plaintiff then withdrew the statement, and told the jury that, as the court had sustained the objection, they must give no weight to what he said in the matter. Says the court:

"Nothing the trial judge could say could remove from the jurors' minds the impression made by the proposal of counsel for the plaintiff to defendant's counsel to read the letter of the latter's client."

Judgment was reversed on this ground.

McHenry Coal Co. *vs.* Sneldon, 34 S. W. Rep., 228.

In People *vs.* Smilie, 188 App. Div., 615-616, the court thus dealt with a question of this kind:

"On the cross-examination of Smilie the following occurred: 'Q. When you were arrested there was a man with the officer by the name of King? A. He said his name was Williams. He was not with the officer when I was arrested and he told me and the officer that his name was Williams. Q. He is the man who is referred to as the Englishman? A. Who has referred to him? I haven't. Q. You were accused by that man? By Mr. McIntyre: I object to that as manifestly unfair on the part of the District attorney, and he knows it. Objection sustained. Q. Weren't you identified by him as one of the three men who got his money at Niagara Falls? By Mr. McIntyre: I object to that. The Court: No, no, Mr. Murphy, that is the same line of questions to which the court sustained counsel's objections.'

"The manifest purpose of this examination was to create the impression in the minds of the jurors that Smilie had stolen money from King, and the offense charged in the indictment was stealing money. This conduct was improper and the vice of the testimony was not cured by excluding the evidence (*Manigold vs. Black River Traction Co.*, 81 App. Div. 381).

"And the most vicious part of the examination was in the

question put by the District attorney after the court had indicated clearly that the line of testimony was improper. The testimony of Webb, with his participation in the dice throwing was not of the strongest probative force, and the defendants were entitled to a fair trial for the precise offense charged in the indictment."

"The judgment should be reversed."

In Miller *vs.* Territory of Oklahoma, 149 Fed. Rep., 330, the Circuit Court of Appeals for the Eighth Circuit (consisting of Sanborn and Van Devanter, circuit judges, and Philips, district judge) in setting aside a conviction for grand larceny on the ground, among others, that the prosecuting officer at the trial had improperly sought in the cross-examination of one of defendant's witnesses to show that he associated with thieves, said:

"The foregoing incident strikingly illustrates where the responsibility for the miscarriage of justice in criminal prosecutions should sometimes be placed, instead of imputing the reversal of convictions by the appellate courts to what is popularly termed 'mere technicalities.' The zeal, unrestrained by legal barriers, of some prosecuting attorneys, tempts them to an insistence upon the admission of incompetent evidence, or getting before the jury some extraneous fact supposed to be helpful in securing a verdict of guilty, where they have prestige enough to induce the trial court to give them latitude. When the error is exposed on appeal, it is met by the stereotyped argument that it is not apparent it in anywise influenced the minds of the jury. The reply the law makes to such suggestion is: that, after injecting it into the case to influence the jury, the prosecutor ought not to be heard to say, after he has secured a conviction, it was harmless. As the appellate court has not insight to the deliberations of the jury room, the presumption is to be indulged, in favor of the liberty of the citizen, that whatever the prosecutor, against the protest of the defendant, has laid before the jury, helped to make up the weight of the prosecution which resulted in the verdict of guilty."

The Court of Appeals, while stating that the remarks of counsel here complained of were improper, refers to two

cases in this court as authority for holding that the judgment should not be reversed. These cases are Dunlap *vs.* U. S., 165 U S., 186, and Sawyer *vs.* U. S., 202 U. S., 150. But in both those cases the decision is upon the ground that the counsel making the improper remark when rebuked by the court at once withdrew it. In this case he repeated the remark making the second statement much more emphatic than the original remark.

Much more like the case at bar are the cases of Wilson *vs.* United States, 149 U. S., 60, and Waldron *vs.* Waldron, 156 U. S., 361.

In the former case the prosecuting officer in his argument to the jury referred to the fact that the defendant had not taken the stand as a witness. Upon objection by defendant's counsel the court said: "I do not know that it ought to be the subject of comment by counsel." Thereupon the District attorney said:

"I did not mean to refer to it in that light, and I do not intend to refer in a single word to the fact that he did not testify in his own behalf."

In delivering the opinion of this court Mr. Justice Field, in referring to this last remark of the District attorney, said it "was equivalent to saying, 'You, gentlemen of the jury, know full well that an innocent man would have gone on the stand and have testified to his innocence, but I do not mean to refer to the fact that he did not, for it is a circumstance which you will take into consideration without it.'"

So in this case, after having once referred to the fact that Machen had pleaded guilty and after the court had instructed the jury that they were not to consider that statement, counsel for the Government, to all appearance seeking to affect the minds of the jury, while disavowing any such intention, said: "My reference to Machen was not that you might consider it against this man at all. You could not. *But it is a fact which you all know, and it has been repeated a dozen times in this case.*"

In Waldron *vs.* Waldron an action was brought against a woman for damages for alienating the affections of the plaintiff's husband. The record of a divorce between the plaintiff and her husband had been offered in evidence with the distinct understanding by the court that it was for the purpose of proving a divorce only, the court holding that it could not be used for the purpose of showing the grounds of the divorce. Yet one of plaintiff's attorneys in the opening argument of the case to the jury plainly intimated that the divorce had been granted on account of adultery between the defendant and the plaintiff's husband. The defendant's counsel objected to this, and the court remarked that "all that was in the declaration the court excluded." In the closing argument one of the plaintiff's counsel said:

"The conclusion that it [the evidence] leads to counsel shrinks from; it hurts him. The jury cannot be fogged about it. There is something underneath here that is reached for, and you will lay hold of it, and you will not be deceived about it. There will be no effectual effort to keep your minds from coming to the conclusion that they ought to reach. I shall confine myself to the statements admitted by the court and read to the jury."

In the subsequent charge to the jury the court instructed the jury that the allegations contained in the bill of complaint in the divorce case were not evidence in the case on trial, and the court added:

"Such an inference has been sought to be drawn by counsel from the proceedings in that case, but it is an inference not warranted by the record in evidence and unfair towards defendant. The jury will try this case upon the evidence produced on this trial, and not assume or infer that other evidence might have been produced here or was produced in some other case to which the defendant was not a party."

Here, again, it will be seen that offending counsel, while saying to the jury that he would confine himself to the statements admitted by the court and read to the jury, by innu-

endo referred to the grounds upon which the divorce had been granted after the court had ruled that that should not be done. And here, too, the court interrupted the argument and told the jury not to consider the contents of the pleadings in the divorce case, and subsequently instructed them to try the case on the evidence before them, and nothing else; that no inference injurious to the defendant could be drawn from the divorce record. Yet because of the misconduct of the counsel for the plaintiff, as above set forth, this court held that a verdict in favor of the plaintiff should be set aside. That was a case involving only dollars and cents. This case involves a man's liberty and his reputation.

The same distinguished counsel who thus pressed upon the jury that was trying Crawford the fact that Machen had admitted his guilt had previously obtained the conviction of Machen in another case (Lorenz *v.* U. S., 24 App. D. C., 337) by practically threatening to have an indictment found against any juror who should hold out for an acquittal. In that case, too, opposing counsel objected to this method of trying a case, but no exception was taken nor was any motion made to have the jury discharged. And so the Court of Appeals in that case (p. 391) said:

"The justice having done all that he was called upon to do, there was no ground for an exception to his action. He could not, of his own motion, withdraw a juror and continue the case for trial before another jury without affording the defendant, probably, good foundation for a plea of former jeopardy. The defendant made no such motion. If, as had been stated, he contemplated a motion of that, or any other nature, founded on the incident, he abandoned the idea and proceeded with the trial. Having thus elected to take the chance of a verdict, without motion or exception, there is no foundation for the assignment of error."

It is respectfully submitted that this case should be remanded to the Court of Appeals of the District of Columbia with instructions to direct the Supreme Court of the District

to set aside the verdict and judgment against the petitioner. If this court shall be of opinion that the first count of indictment 24688 charges no crime the demurrer to that count must be sustained, and the defendant discharged. Otherwise, a new trial should be directed.

A. S. WORTHINGTON,
Attorney for Petitioner.

APPENDIX.

Sections of the Revised Statutes Relating to Bribery.

SECTION 1781. Every member of Congress or any officer or agent of the Government, who, directly or indirectly, takes, receives, or agrees to receive, any money, property, or other valuable consideration whatever from any person for procuring or aiding to procure any contract, office or place from the Government or any department thereof, or from any officer of the United States, for any person whatever, or for giving any such contract, office or place to any person whomsoever, and every person who, directly or indirectly, offers or agrees to give, or gives, or bestows any money, property, or other valuable consideration whatever for the procuring or aiding to procure any such contract, office, or place, and every member of Congress who, directly or indirectly takes, receives or agrees to receive any money, property, or other valuable consideration whatever after his election as such member, *for his attention to, services, action, vote, or decision on any question, matter, cause or proceeding* which may then be pending, or may by law or under the Constitution be brought before him in his official capacity or in his place as such member of Congress, shall be deemed guilty of a misdemeanor and shall be imprisoned not more than two years, and fined not more than ten thousand dollars. And any such contract or agreement may, at the option of the President, be declared absolutely null and void; and any member of Congress or officer convicted of a violation of this section, shall, moreover, be disqualified from holding any office of honor, profit or trust under the Government of the United States.

SECTION 1782. No Senator, Representative, or Delegate, after his election, and during his continuance in office, and no head of a department or other officer or clerk in the employ of the Government shall receive or agree to receive, any compensation whatever, directly or indirectly, *for any services rendered or to be rendered, to any person either by himself or another, in relation to any proceeding, contract,*

claim, controversy, charge, accusation, arrest, or other matter or thing in which the United States is a party, or directly interested, before any department, court-martial, bureau, officer, or any civil, military or naval commission whatever. Every person offending against this section shall be deemed guilty of a misdemeanor, and shall be imprisoned not more than two years, and fined not more than ten thousand dollars, and shall, moreover, by conviction thereof, be rendered forever thereafter incapable of holding any office of honor, trust or profit under the Government of the United States.

SECTION 5449. Every person, who, directly, or indirectly, gives any sum of money, or other bribe, present or reward, or any promise, contract, obligation or security for the payment or delivery of any money, present, or reward, or any other thing of value *to obtain or procure the opinion, judgment or decree of any judge of the United States,* in any suit, controversy, matter or cause depending before him, shall be fined and imprisoned at the discretion of the court and shall forever be disqualified to hold any office of honor, trust, or profit under the United States. (See Sec. 5499.)

SECTION 5450. Every person who promises, offers, gives, or causes or procures to be promised, offered or given, any money or other thing of value, or makes or tenders any contract, undertaking, obligation, gratuity or security for the payment of money or for the delivery or conveyance of anything of value to any member of either house of Congress, either before or after such member has been qualified or has taken his seat, *with intent to influence his vote or decision* on any question, matter, cause or proceeding which may be at any time pending in either House of Congress or before any committee thereof, shall be fined not more than three times the amount of money or value of the thing so offered, promised, given, made or tendered, or caused or procured to be so offered, promised, given, made or tendered, and shall be, moreover, imprisoned not more than three years.

SECTION 5451. Every person who promises, offers or gives, or causes or procures to be promised, offered, or given, any money or anything of value, *with intent to have his decision or act on on any question, matter, cause, or proceeding which may, at any time be pending, or which may be, by law brought before him in his official capacity, or in his place of trust or profit, influenced thereby,* shall be punished as prescribed in the preceding section.

SECTION 5499. Every judge of the United States, who in any wise accepts, or receives any sum of money, or other bribe, present or reward, or any promise, contract, obligation, gift, or security for the payment of money or the delivery or conveyance of anything of value, *with the intent to be influenced thereby in any opinion, judgment, or decree in any suit, controversy, matter or cause depending before him* shall be fined and imprisoned at the discretion of the court and shall be forever disqualified to hold any office of honor, trust or profit under the United States.

SECTION 5500. Any member of either house of Congress who asks, accepts, or receives any money, or any promise, contract, undertaking, obligation, gratuity or security for the payment of money or for the delivery or conveyance of anything of value either before or after he has been qualified or has taken his seat as such member *with intent to have his vote or decision on any question, matter, cause or proceeding which may be at any time pending in either house, or before any committee thereof, influenced thereby,* shall be punished by a fine of not more than three times the amount asked, accepted or received, and by imprisonment not more than three years.

SECTION 5501. Every officer of the United States and every person acting for or on behalf of the United States, in any official capacity under or by virtue of the authority of any department or office of the Government thereof; and every officer or person acting for or on behalf of either house of Congress, or any committee of either house, or of both houses thereof, who asks, accepts or receives any money or any contract, promise, obligation, undertaking, gratuity or security for the payment of money or for the delivery or conveyance of other thing of value, or makes or tenders any contract, undertaking, obligation, gratuity or security for the payment of money or for the delivery or conveyance of anything of value, to any officer of the United States, or to any person acting for or on behalf of the United States in any official function, under or by authority of any department or office of the Government thereof or to any officer or person acting for or on behalf of either house of Congress, or of any committee of either house, or both houses thereof, *with intent to influence his decision or action on any question, matter, cause, or proceeding which may at any time be pending, or which may by law be brought be-*

fore him in his official capacity or in his place of trust or profit, or with intent to influence him to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud on the United States, or to induce him to do, or omit to do, any act in violation of his lawful duty, shall be punished as prescribed in the preceding section.

Sections Relating to Interest of Officials in Contracts with the Government.

SECTION 3739. No member of, or delegate to Congress shall directly or indirectly, himself, or by any person in trust for him, or for his use or benefit, or on his account, undertake, execute, hold, or enjoy, in whole or in part any contract or agreement made or entered into in behalf of the United States, by any officer or person authorized to make contracts on behalf of the United States. Every person who violates this section shall be deemed guilty of a misdemeanor, and shall be fined three thousand dollars. All contracts or agreements made in violation of this section shall be void; and whenever any sum of money is advanced on the part of the United States, in consideration of any such contract or agreement, it shall be forthwith repaid; and in case of refusal or delay to repay the same when demanded by the proper officer of the department under whose authority such contract or agreement shall have been made or entered into, every person so refusing or delaying, together with his surety or sureties, shall be forthwith prosecuted at law for the recovery of any such sum of money so advanced.

SECTION 3740. Nothing contained in the preceding section shall extend or be construed to extend to any contract or agreement made or entered into or accepted by any incorporated company where such contract or agreement is made for the general benefit of such incorporation or company; nor to the purchase or sale of bills of exchange or other property by any member of (or delegate to) Congress, where the same are ready for delivery and payment therefor is made at the time of making or entering into the contract or agreement.

SECTION 3741. In every such contract or agreement to be made or entered into or accepted by or on behalf of the United States, there shall be inserted an express condition that no member of (or delegate to) Congress shall be ad-

mitted to any share or part of such contract or agreement or to any benefit to arise thereupon.

SECTION 3742. Every officer who, on behalf of the United States, directly or indirectly makes or enters into any contract, bargain, or agreement, in writing or otherwise, other than such as are hereinbefore excepted, with any member of (or delegate to) Congress, shall be deemed guilty of a misdemeanor, and shall be fined three thousand dollars.

In the Supreme Court of the United States.

OCTOBER TERM, 1908.

WM. GORDON CRAWFORD, PETITIONER,
v.
THE UNITED STATES.
No. 92.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF ON BEHALF OF UNITED STATES.

There are twenty-four assignments of error, which will be considered here as fully as may be deemed desirable.

FIRST.

(*a*) It does not appear how the Government could have been defrauded by the alleged scheme or conspiracy.

(*b*) While it is averred that the defendant, Machen, was to receive a part of the proceeds of the contract referred to, it is not averred, directly or indirectly, that this was intended to influence the official action of the said defendant.

(*c*) It is not averred that by the contract referred to in the indictment the Government was to pay

more than it would have had to pay if the alleged agreement between the defendants had not been entered into.

(*d*) It is not averred that the contract was not honestly awarded.

The indictment charged, in substance, the following:

That Machen was General Superintendent of the Free Delivery System, and acted for and on behalf of the United States, in the office of the Postmaster-General.

That specifications respecting the satchels would be drawn by and under the supervision of Machen as such General Superintendent.

That such specifications would be approved and adopted by the First Assistant Postmaster-General upon and in accordance with the advice and recommendation of the said Machen as such General Superintendent.

That the purchase of such satchels would be made from time to time by the said First Assistant Postmaster-General upon and in accordance with the advice and recommendation of the said Machen as such General Superintendent of Free Delivery, and in such numbers and of such styles and kinds as were recommended by the said Machen, as such General Superintendent, and that the bills for the price of such satchels were ordered to be paid upon the advice and recommendation of said Machen as such General Superintendent.

That William Gordon Crawford was the agent of the Postal Device and Lock Company.

That on May 6, 1902, the First Assistant Postmaster-General, acting upon the advice of Machen as such General Superintendent, published invitations for proposals or bids, for furnishing to the Post-office Department carriers' satchels and collectors' satchels, as should be needed by said Post-Office Department, during the period of four years from July 1, 1902.

That August W. Machen, William G. Crawford, and George E. Lorenz conspired to cheat and defraud the United States by the following scheme, viz:

(*a*) Crawford was to advise the Postal Device and Lock Company, of which he was agent, to put in a bid for furnishing to the Post-Office Department the satchels referred to in the published invitation of the First Assistant Postmaster-General, above mentioned, and to further advise that company to enter into a contract with said Lorenz, by which contract it should be agreed that if the contract for furnishing these satchels should be awarded to said Postal Device and Lock Company, then there should be paid by said company to said Lorenz "all and so much of said payments so to be made by said Post-Office Department as should remain after the said Postal Device and Lock Company should have paid for the cost of manufacturing and delivering such satchels, so to be sold and furnished, and should have retained for itself, the said Postal Device and Lock Company, out of said payment so to be made, an additional sum

25 cents for each of said satchels so to be sold and furnished." (Rec., p. 3.)

That is, out of whatever amount the Government should pay to the Postal Device and Lock Company for satchels furnished by it, that company would retain only the cost of manufacturing and delivering, and 25 cents on each satchel, and then pay over all the residue of such amount to Mr. George E. Lorenz.

(*b*) That it was agreed by and between Machen, Crawford, and Lorenz that all the moneys so paid over by the Postal Device and Lock Company to Lorenz "should be divided between the said Crawford, Machen, and Lorenz, in certain proportions, and upon some certain basis and principle of division" to the grand jury not known, "and by a plan whereby the share and shares of the said money thus to be allotted and paid to the said August W. Machen, from time to time, in accordance with said unlawful conspiracy, should be transmitted to him, the said August W. Machen," through the agency of said Crawford and Lorenz.

(*c*) That the Postmaster-General did, on June 25, 1902, enter into a contract with said Postal Device and Lock Company for the furnishing by said company to said Post-Office Department of so many of such satchels as might be needed during the period of four years from July 1, 1902.

(*d*) That Crawford did present a bill to the Post-Office Department, for and on behalf of said Postal Device and Lock Company, for $15,800, for five thousand of said satchels, which the company had

sold to the Post-Office Department, at $3.16 per satchel, under and in pursuance of the said contract.

(*e*) That Machen did, in his official capacity, approve said bill, by writing thereon, "Approved. A. W. Machen, Genl. Supt. F. D. system."

(*f*) That Crawford did, in October, 1902, receive from the Post-Office Department a warrant on the Treasurer of the United States for $15,800, and that he did draw his check on bankers in New York, on October 21, 1902, for $5,441.35, payable to the order of Lorenz, and did send that check to Lorenz. That Lorenz collected the amount of the check, and

(*g*) That Lorenz did, in pursuance of the unlawful agreement, transmit to the said August W. Machen the sum of $900.

It is submitted that when an officer of the Government, charged with the duty of advising and recommending the purchasing of public supplies, enters into an agreement with one who proposes to become, and does thereafter become, the vendor of the supplies as to which such officer has advised the purchase and has approved the bid of such vendor, under which agreement such officer is to receive a certain proportion of the purchase money paid by the Government for such supplies so furnished, and that there was actually paid to and received by such officer a portion of the money so paid by the Government to said vendor for such supplies so furnished, that such facts so charged, without more, constitute a fraud on the Government, and that the official action of such officer was influenced by such

agreement. (*Wardell* v. *R. R. Co.*, 103 U. S., p. 658.) But the indictment not only charges that this agreement was entered into by the defendants to defraud the United States, but it further charges, as to each of the above-recited acts done by the defendants, and by either of them, that each act was done in furtherance of said unlawful agreement.

"A conspiracy is sufficiently described as a combination of two or more persons, by concerted action, to accomplish a criminal or unlawful purpose, or some purpose not in itself criminal or unlawful, by criminal or unlawful means." (*Pettibone* v. *United States*, 148 U. S., 203.) The indictment charges that each of the acts done by the defendants, and by either of them, was done in pursuance of the unlawful agreement, and was done to defraud the United States.

It is not material to the offense charged that the United States should have been *injured* thereby. The gist of the offense of conspiracy is the entering into the unlawful agreement. The offense is completed by any act done in pursuance of such agreement. It might appear that the United States, instead of suffering material injury by the conspiracy, had been actually materially benefited by it, yet such a result could not avail the accused as a ground of defense. One who enters a dwelling house in the nighttime, with burglarious intent, might happen to save the life of the occupant from the assault of an intended assassin, but his beneficent intervention would not avail to protect him from the penalty of his burglary.

The discovery of a completed conspiracy might be of great advantage to the United States in disclosing other like conspiracies and avoiding them.

To "defraud the United States" does not mean, only, imposing a pecuniary loss on the United States, for, as was said by the Court of Appeals of the District of Columbia in the Tyner case, "To defraud means not only to deprive or withhold from one that which justly belongs to or is due him, but also to deprive him of any right by artifice or wrong practiced upon him. In its equitable sense, fraud, says Mr. Justice Story, properly includes all acts, omissions, and concealments which involve a breach of legal duty, trust, or confidence justly reposed and are injurious to another, or by which an undue and unconscientious advantage is taken of another."

The relations between the United States and their officers—and especially those officers charged with the duty of purchasing the public supplies—are of the most confidential character. Such officers should have an eye single to the interest of the Government. The delicate trusts confided to them should be administered with single regard to the interests of the Government. They can not protect the interests of the Government for which they are the purchasing agents if they agree with the person from whom they are about to purchase that a certain proportion of the purchase money shall be paid to such officer. The amount so agreed to be paid must be in excess of the amount for which the vendor would have sold

his goods, and hence must be a taking from the Government of more money than the goods could have been bought for.

In *Hyde* v. *Shine* (199 U. S., 81) Mr. Justice Brown, delivering the opinion of the court, said: "The States have a right to punish the violation of a statute enacted as part of its public policy, notwithstanding they may have suffered no pecuniary damage therefrom.

"The same argument applies to the United States, whose lands have been procured in plain violation of the spirit if not the letter of the statute, and by a further step in the same fraudulent scheme."

And on page 82, in the same connection, he says: "Whatever may be the rule in equity as to the necessity of proving actual loss or damage to the plaintiff, we think a case is made out, under this statute, by proof of a conspiracy to defraud and the commission of an overt act, notwithstanding the United States may have received a consideration for the lands and suffered no pecuniary loss."

That the facts charged in the indictment constitute a conspiracy to defraud the United States would seem to follow from the reasoning of decided cases. (*Tyner* v. *United States*, 22 Appeals, D. C., p. 362; *United States* v. *Curley*, 122 Fed. Rep., 738, and 130 Fed Rep., p. 10.)

In his brief in support of the petition for certiorari, counsel for petitioner says, "The single count upon which the defendant stands convicted * * * charges no specific criminal or wrongful intent on the

part of the defendant. In this respect it differs from all the other counts in the several indictments."

The count (Record, p. 32) charges that this defendant did agree with others, "knowingly, wrongfully, and corruptly to defraud the United States in the manner and through the means of the dishonest scheme and arrangement, following," etc., and then follows a description of the plan by which the unlawful agreement was to be carried out. In *Pettibone* v. *United States*, 148 U. S., 197, this court has said that "a conspiracy is sufficiently described as a combination of two or more persons, by concerted action, to accomplish a criminal or unlawful purpose, or some purpose not in itself criminal or unlawful, by criminal or unlawful means."

Here the criminal or unlawful purpose was to defraud the United States. That was the specific criminal or unlawful intent of this defendant in the agreement to which he was a party. The means by which it was proposed and agreed to carry out this agreement are then detailed, and the overt acts of this defendant, in his personal participation in the execution of the agreement, are clearly set out. (See Crawford's letters to Lorenz, pp. 95, 96, 129; his procurement of the contract between the Postal Device and Lock Company and Lorenz and many others; Lorenz's testimony as to memoranda accompanying Crawford's letter to him of October 22, 1902 (Rec., pp. 122–123), and Crawford's explanation of such memoranda accompanying his letters to Lorenz (Rec., 184, 185).

Lorenz, who is himself one of the defendants here, has in his testimony unfolded the unlawful agreement and the details of the plan and of its execution. (Rec., p. 122 et seq.)

SECOND AND THIRD.

These assignments of error relate to the granting of an instruction prayed for by the Government and for declining to direct a verdict for defendant. They are both embraced in the first assignment, above considered.

FOURTH.

"Overruling the defendants' challenge, for cause, of the juror John C. Haley." It appears that Haley, when called as a juror, made no claim that he was exempt from jury service, but he testified that he was a druggist; that his drug store is a subpostal station, and that he is the clerk in charge; that technically he is a clerk of the city post-office, and that he is paid an annual compensation which includes all clerk hire and rental of the premises; that it is pay for the entire service of taking charge of the station.

Thereupon counsel for the defendant challenged him for cause, the objection to him being that he is "a salaried officer of the Government," but the court overruled the challenge. (Rec., pp. 77, 78.)

The objection presented to the court the question, Was Haley "a salaried officer of the Government;" and if so, did that disqualify him as a juror? Haley, being a clerk in charge of postal substation, was not "an officer of the Government." His appointment

was made by the city postmaster, and not by the President. "Unless a person in the service of the Government, therefore, holds his place by virtue of an appointment of the President, or of one of the courts of justice or heads of departments authorized by law to make such an appointment, he is not, strictly speaking, an officer of the United States." (*United States* v. *Smith*, 124 U. S., 532.) It has been distinctly held that a person employed by the United States to sell stamps at a small yearly salary, is not a "salaried officer of the United States, so as to exempt him from jury duty." (*United States* v. *Barber*, 21 D. C., 456.)

It is now, however, sought to shift the ground on which the objection was rested in the trial court, the ground to which the mind of the trial judge was directed, and which alone he was called on to consider and to decide, and to rely now, in this court of review, on a wholly distinct ground, viz, that Haley was "in the employ of" the United States. It is undoubtedly true that at common law servants were disqualified, by that relation, from service on juries in a case to which the master was a party, and this for the reason assigned, that the servant was dependent upon the master, and could not, as to him, exercise an independent judgment. But can any case be adduced in which it has been held that a citizen of the United States, in the civil service of the Government, occupies the relation of "servant" in the sense in which that relation was contemplated by the common law? Is one who is engaged in a distinct vocation, profes-

sional or industrial, mechanical or otherwise, who enters into a contract with the United States to furnish the Government with goods, material, labor, houses, or lands for a specified compensation, such a servant of the Government as to disqualify him for service on a jury in a case in which the United States is a party? Mr. Haley was a druggist, having a fixed place of business. This was his vocation. He had no other. The Government, doubtless supposing that Haley's drug store was a desirable place for what was known as a "branch post-office," contracted with Haley for the space necessary, and for such service as might be needed for the sale of postage stamps and the depositing of mail matter. It contracted with Haley for something he was able to furnish, just as it might have contracted with him for any articles which were upon his shelves for sale—just as it might have contracted with anyone to sell old arms or horses and to purchase new ones for Government use. Haley was in no sense dependent upon the United States. He did not sell to them his time or his personal labor or his talents, whatever they might be. He contracted to furnish certain things which he had to dispose of, and he did furnish them.

But, are the common-law qualifications of a juror in force in the District of Columbia? Congress has, by statutory enactment, prescribed the qualifications of jurors in this District, and among those qualifications there does not appear this common-law feature of servant or even employee. Indeed, it has accentuated the distinction between those who may and

those who may not render jury service by two distinct sections of the code of laws.

> SEC. 215. *Qualifications.*—No person shall be competent to act as a juror unless he be a citizen of the United States, a resident of the District of Columbia, over twenty-one and under sixty-five years of age, able to read and write and to understand the English language, and a good and lawful man, who has never been convicted of a felony or a misdemeanor involving moral turpitude.
>
> SEC. 217. All executive and judicial officers, salaried officers of the United States and of the District of Columbia and those connected with the police or fire departments, counselors and attorneys at law in actual practice, ministers of the gospel, and clergymen of every denomination, practicing physicians and surgeons, keepers of hospitals, asylums, almshouses, or other charitable institutions created by or under the laws relating to the District, captains and masters and other persons employed on vessels navigating the waters of the District, shall be exempt from jury duty, and their names shall not be placed on the jury lists.

Can it be reasonably contended that even employees of the Government, who are not salaried officers, are either disqualified or exempt from jury duty, although not embraced in either of the foregoing sections of the Code?

But further, by section 1 of the Code, it is provided that "The common law * * * shall remain in

force, except so far as the same is inconsistent with, o replaced by, some provision of this Code." Is not the common law replaced by the two sections of the Code above quoted? The reason and purpose of a statute is the safest guide in its interpretation, and it can not be doubted that in framing a body of law for the government of the District of Columbia, Congress was controlled by the reason and purpose to prescribe in its provisions for jury service all the qualifications and all the exemptions which it intended should for the future govern in the selection of jurors. It is worthy of note that in the Code provided for Alaska Congress did in express terms include among the disqualifications for jurors the common-law feature of one who was the servant of a party to a cause. (2 Supp., R. S., 105.) But it has been expressly decided by the courts of the District of Columbia. In *United States* v. *Lee* (4 Mackey, 496) the Court said:

> The jury law exempts from service on juries parties who are engaged in public office, whether on the part of the Government or on the part of the District of Columbia. It exempts other classes of persons also from jury duty, but the persons exempted are not disqualified as jurors. It is simply a privilege of the party to become exempt from jury service on account of other engagements. But he has the capacity, the faculty, to be a juror. It is his own personal privilege, and he alone is the party who shall take advantage of it. If he pleases to waive the privilege

> he is still a competent juror, and he has all the functions and powers which the law imputes to a man as necessary to constitute one of the twelve triers of the accused.

This decision was made before the adoption of the present Code of Law for the District of Columbia, but its reasoning is applicable.

The cases cited on the brief of counsel for Crawford can have but little, if any, application here. They are for the most part cases arising under state statutes and judicial constructions. An examination of many of them disclose the fact that they rest almost entirely on the old common-law authorities, and, so far as modern cases are relied on, these will be found in turn to stand upon Blackstone and Coke as their sole support. The changed conditions of society, and of the business relations of men, make inapplicable the reasons which justified the common-law doctrine as to jurors, and the modern sense of human economy, and the altered conditions of affairs, would appear to warrant the provisions of the District Code.

FROM THE FIFTH TO THE THIRTEENTH ASSIGNMENTS OF ERROR, INCLUSIVE.

These assignments all relate to the rulings of the court, on motions to strike out certain evidence offered on behalf of the United States and admitted without objection on behalf of defendant, and to the refusal of the court to admit certain other evidence offered on behalf of the defendant. The whole matter appears in the record, pages 102–107.

Crawford had certain correspondence in the year 1902 with the Fabrikoid Company. In the year 1903, when preparing for his defense, he appears to have visited Newburgh, N. Y., where the office of the Fabrikoid Company was, and there he asked and obtained permission to examine the files of the company and look through the correspondence between himself and the company. After he had left the office and had returned to Washington the officers of the company discovered that Mr. Crawford had not only availed himself of the permission to look through the correspondence, but that he had also cut from their letter books the carbon copy of a letter from the company to him, dated April 21, 1902, and had taken it away with him, and had also erased from the index to such letter book the number of the page where the carbon copy appeared and the name of the letter, but, having overlooked the fact that the letters contained in that book were cross-indexed, he failed to make but one erasure. The detection of the abstraction and the erasure followed, and the company, through its president, Mr. Aspinwall, wrote to Crawford the letter of December 7, 1903, which the Government put in evidence, without objection. (Rec., 102.) The defendant, through his counsel, then offered in evidence the letter of December 8, 1903, from Mr. A. S. Worthington, addressed to John Aspinwall, president, etc. (Rec., 105), but the court sustained the objection made by the Government to the admission of that letter, on the ground "that the

defendant's counsel could offer his evidence when the prosecution had concluded theirs."

Thereupon counsel for defendant, on cross-examination, proved by the witness Aspinwall, that he had received the letter of December 8, 1903, written to him by Mr. Worthington, and that he had replied to the same, by a letter dated December 10, 1903. Thereupon counsel for defendant offered that letter, dated December 10, 1903, in evidence on behalf of defendant, to the admission of which letter counsel for the Government objected, and the court sustained the objection, on the ground "that the defendant could not give his evidence at that time."

It can not be disputed that the trial court alone has discretionary power to determine the order in which the proof in a case shall be admitted, and that it is no abuse of such discretion to hold that the defendant shall not introduce his evidence until the prosecution has, in regular order, offered its evidence.

This is a sufficient answer to the assignment of error, but the court might properly have refused to admit the letter written by Mr. Worthington and the reply thereto from Mr. Aspinwall on the ground that they were *res inter alios*. Where A writes a letter to B, which is received in evidence on behalf of C, the letter in reply from B to A might properly be admitted, but if a reply, made not by B but by some third person, is offered, especially where it does not appear that B had ever seen or authorized such reply and could not be held bound by it as an admis-

sion made by himself, there can be no ground on which such letter can be admitted.

But the defendant Crawford was called and testified in his own behalf, and on cross-examination he was asked (Rec., p. 199):

> Did you not testify at the former trial (p. 1291): "I did not think that Mr. Aspinwall would want me to take a letter, mutilate his files; I did not think he had any objection except on that ground; but I did not think he would want any one to mutilate his file, and I took the letter out and rubbed that out so that he would not know, and I might have possession of the letter?"
>
> A. Yes, sir; I so testified.

The witness was then permitted to add: "It was not that I had any doubt in my mind that Mr. Aspinwall would object to my taking the letter, as I testified, and as shown by Mr. Aspinwall's conduct when he put me in a room by myself and told me that I could have everything that I wanted to." (Rec., 199–201.)

Here, then, is a plain admission by this defendant that he had attempted to destroy incriminating evidence and that he had attempted to do so by the mutilation of this letter book and the concealment of the evidence of that offense.

It is of significance, in connection with this assignment of error, that while the court had refused to admit the evidence offered on behalf of defendant, solely on the ground that it was offered out of the regular order, that is, while the Government was still

introducing its evidence, that that ground was removed after the Government had closed its case and the defendant was producing evidence on his own behalf. It was at this stage that defendant Crawford was called and testified on his own behalf. He was allowed to state fully all the facts connected with his visit to the office of the Fabrikoid Company, and he did so, and he had stated "and when I came to this particular letter in the book, which I had forgotten altogether, did not remember at all, why I deemed it of such great importance, because——," and was proceeding to state why he deemed the letter of such great importance, or else why he had forgotten it, when he was arrested by objection from the Government. The discussion between counsel and the rulings of the court appear on pages 197–199 of record, and need not be repeated here.

The defendant having testified that he tore or cut the letter out of the letter book of the Fabrikoid Company and had erased the index, was asked by counsel on reexamination, "Why did you take them?" This was objected to, and the objection sustained. Counsel then followed it by the further question, "Now, after you had taken them, what did you do with them?" The former question was again read, and the court said: "That is susceptible of two constructions, and I say that I am only including in my ruling the expression which calls for his motive in taking them for a part of the purpose. That is what is excluded; not the other construction of the question."

The witness was allowed to explain his act, in taking the letters, viz, that he thought he had Mr. Aspinwall's permission to take them, but his counsel wished to go further, and obtain from the defendant, as a witness, his statement as to his motive in taking the letter, i. e., what he intended to do with it.

Doctor Wharton, in his work on Evidence, says:

> It is sometimes important to determine whether a party, in doing a particular thing, acted in good faith. In the old practice his mouth was sealed, and in such cases his good faith could be only shown by inferences from the circumstances. Under our present practice he may be examined as to his reasoning and motives; but such evidence is necessarily open to suspicion, since it undertakes to prove good faith by an appeal to the very good faith which is to be proved. (G. Wharton on Evidence, sec. 35.)

Further on he says:

> Ordinarily, as is elsewhere shown, a witness can not be examined as to another person's motives. It is otherwise with a witness's own motives, as to which he is always open either to examination or cross-examination. Hence a party, when examined as a witness, may be asked—so has it been held—as to his own motives or intentions, when these are material. (Ibid., 482.)

Now, all this means only that a person should not be made the victim of suspicious appearances, but should be allowed to remove ambiguities, and to

reconcile conflicting circumstances, by his explanations. Crawford, with the permission of Aspinwall, examines the files and papers of the Fabrikoid Company. He finds in a letter book the letter-press copy of a letter written to him by that company. He cuts out of the book the leaf containing this letter and erases, as he believes, all evidence of the copy. He is allowed to explain that he took the letter from the book, under the belief that Aspinwall's permission extended to the taking of the letter, and so he purges himself, as far as he could, of the charge of dishonest abstraction. But his counsel now proposes to go further, and to show by Crawford's testimony the uses to which he proposed to apply the letter. The witness was allowed to testify as follows:

> In answer to Major Conrad's question, the question being read from the last trial, I wanted to make it clear that I did not think that Mr. Aspinwall would object to my taking any of his files away, but I did think that he would object to my mutilating his files; and I erased the index numbers so as to keep him from knowing that I had mutilated the files only, and with the idea of putting them back and making the file perfect. (Rec., p. 201.)

Now this is all that the defendant, after hearing the questions asked him by his counsel, saw proper to state as to what use he proposed to make of the letter. A party charged with stealing money, or obtaining money under false pretenses, may be allowed to explain the circumstances of his conduct,

and to show that what appeared to be either of these offenses was, in fact, an authorized or a justifiable act on his part, but what materiality could there be in his further statement, on direct examination, as to what disposition he intended to make of the money so obtained.

The record shows the fact to be that, notwithstanding the objection of the Government and the ruling of the court, Crawford did state fully the fact of his taking the letters—why he did not ask Aspinwall's permission to take them—that he had cut the letter out of the letter book, because he did not think that Aspinwall would allow him to mutilate his files; that he had rubbed out the entry in the index "so that he would not know, and I might have possession of the letter." (Rec., p. 199.) He was then allowed to make any explanation that he might wish (p. 200), and he made his explanation. He then made a statement privately to the court and counsel, and that statement was allowed to go to the jury. (Rec., p. 201.) It was after this stage that the counsel for the defendant propounded the several questions which the court, on objection from the Government, excluded. These questions were: "What did you do with the letter which you took from the letterpress book of Mr. Aspinwall, after you had taken it?" "Why did you take them?" (the letters). What possible relevancy could the answers to these questions have to the issue before the jury? The object in showing the abstraction of

the letters and the mutilation of Aspinwall's letter book was, in part, to show the attempted spoliation of evidence by the defendant—evidence which the defendant feared might be incriminating. The letter abstracted proved to be of no materiality of itself; merely for what it contained it might not have been admissible in evidence, but the fact that the defendant thought it was incriminating, and for that reason attempted to suppress it, or at least to have it in his possession, was of itself a badge of guilt. He was, for that reason, allowed the fullest opportunity to explain its taking, and why he took it in the way that he did; but his intention as to what further disposition he proposed to make of it, or, that after Aspinwall wrote to him and reproached him for his conduct, he then took the letter to his counsel and asked his advice, and what his counsel did in pursuance of this knowledge, all that has nothing to do with the inquiry before the jury as to his act. But what materiality could there be in his further statement, on direct examination, as to what disposition he intended to make, or indeed had made of the letter so obtained?

TENTH.

As to the refusal of the motion of defendant to strike out so much of the testimony of the witness Aspinwall as related to the taking from his files of the letters, it is enough for the present purpose to refer to the grounds of such refusal as stated by the court in ruling upon the motion. (Rec., 202, 203.)

ELEVENTH.

As to the refusal to allow the defendant as a witness in his own behalf to tell the jury why he did not give or exhibit to Spencer Trask "the books and papers relating to the business of the Postal Device and Lock Company."

The books and papers referred to were not books and papers of the company in whose employ Crawford then was, nor, indeed, was he the bookkeeper of that company, but they were the private books of Mr. Crawford containing private entries made by him for his own use. They may have been, and indeed were, used by him to refresh his memory as to the matters entered therein, but under no conditions were they admissible as substantive evidence of any such matters. He may have shown them to Chance, who was the general manager of the company, but only as he might have shown to him a private letter or entry, which served to corroborate his own statements.

The whole matter appears in record, pages 169–171.

TWELFTH AND THIRTEENTH.

These are covered by the foregoing.

FOURTEENTH.

Refusing to allow defendant to introduce some thirty letters, written in 1902, prior to June 3, by the defendant, representing the Postal Lock and Device Company, to various persons, firms, and corporations,

said letters being offered as evidence tending to show that defendant, at the time they were written, was endeavoring in good faith to get bids for bags, or bags with shoulder straps.

These letters, together with others, which defendant testified he had written to certain manufacturers of artificial leather, the defendant offered in evidence, as confirmatory of his testimony that he had acted in good faith in endeavoring to get bids for such bags, but, on objection by counsel for Government to their admission in evidence, the court sustained the objection, saying: "If the bona fides of the contract with the Government were involved, or if the question of the good faith of the defendant with respect to the quality of the material used in fulfilling the contract were involved, I should see some relevancy to these letters, but the only fraud claimed, as I recall, is that the agreement was to vest a Government officer with an interest in the proceeds of a valid contract." (Rec., pp. 161–162.)

The indictment charged that the conspiracy between Crawford, Machen, and Lorenz was formed on the 3d of June, 1902, and that the contract between the Postal Device and Lock Company and the Postmaster-General, on behalf of the United States, was made on the 25th of June, 1902 (Rec., pp. 31–33), while the letters offered in evidence all appear to have been written prior to June 3, 1902, so that they could have no relevancy whatever to the offense charged in the indictment, or to the issue in support of which they were offered.

FIFTEENTH.

As to the refusal of the court to grant the prayer, No. 8, offered on behalf of the defendant. (Rec., 210.)

The instruction provides that if the jury find from the evidence that when the contract between the United States and the Postal Device and Lock Company was entered into "that Crawford expected and intended that the company should furnish shoulder straps with satchels of the classes A and B," etc. The contract referred to appears on page 230 of record. The parties to it are H. C. Payne, Postmaster-General, and the Postal Device and Lock Company, by Wade Chance, president. Crawford is not a party to it, and his expectations and intentions, with reference to its execution, could not be matters of the least consequence, or have any effect whatever. Yet his expectations and intentions are, by the instruction, made the basis of the jury's action.

The instruction proceeds to direct that if, after Crawford's expectation and intention was found, the jury should find that Machen directed that the "Lamb strap" should be used with the satchels, and that it was impossible for the Postal Device and Lock Company "or said Crawford, as its general manager, to obtain said straps," and that the "Lamb strap" was furnished by the Government "with the understanding on the part of the said Crawford," as the representative of said company, that at the end of each year certain deductions should be made from the

amounts payable to the company on account of its not furnishing such straps, and that "Crawford acted in good faith and without any intent to inflict any pecuniary loss upon the Government, or to defraud it in any way, then the jury is instructed that, as to indictment No. 24688, they are not to consider the fact the shoulder straps were not furnished with the satchels as evidence of the guilt of defendant Crawford."

The indictment charged (Rec., p. 32) that the conspiracy entered into between Machen, Lorenz, and Crawford was to defraud the United States, through and by means of a certain arrangement, viz, Crawford "should advise and procure the Postal Device and Lock Company (1) to offer to the said Post-Office Department a bid for furnishing to the said department so many of the said satchels as might and should be needed by the said department during the said period of four years, etc.; (2) to induce and persuade the said Postal Device and Lock Company, before the said offering of the said bid, to enter into a contract with the said George E. Lorenz," etc.

The instruction asked for by Crawford's counsel provides that if "when the contract between the company and the United States was entered into" that Crawford at that time intended and expected that the company should furnish shoulder straps, etc. The indictment charges that the conspiracy was entered into on the 3d of June, 1902, but that the contract between the company and the United States

was not entered into until the 25th day of June, 1902, so that the time fixed by the instruction, the expectation, and intention of Mr. Crawford should be evidence of his innocence was twenty-two days after the date charged by the indictment of the commission of the offense. Further, it was proposed to instruct the jury that "they are not to consider the fact that the shoulder straps were not furnished with the satchels as evidence of the guilt of the defendant Crawford."

In no aspect of the case was that fact relied on as evidence of the guilt of Crawford. Instruction No. 4 asked for by the Government, and given by the court, expresses accurately the question submitted to the jury as to whether the defendants, or either of them, had presented bills to the Government for satchels with straps, when in fact such straps had not been furnished by the defendants. (Rec., p. 209.) The charge of the court to the jury (Rec., p. 221), so far as it refers to the shoulder straps, relates to the presenting of the claim for straps which had not been furnished, and directs the jury that if they found "that Crawford presented to McGregor for approval and payment a claim against the Government for shoulder straps that had been furnished to the Government, and at the time of so presenting such claim Crawford knew that those straps had not been furnished, then he is guilty with respect to that particular claim."

This charge directed the attention of the jury to the evidence bearing upon Crawford's knowledge of and

connection with the claim for payment for shoulder straps, and it avoided the manifest error in the instruction offered by Crawford's counsel and refused by the court.

It may have been true that Crawford, "when the contract of June 25, 1902," was entered into, expected his company to furnish shoulder straps. He may have learned from Machen, in August, that the Government would furnish the straps, and yet, if with this knowledge Crawford did, at a later date, present a claim to the Government for payment for straps, and demanded such payment, his previous good intentions and expectations can not avail to condone the subsequent crime.

Crawford may have had the most honest intentions and expectations in the matter of the straps, but his coconspirators may not have had, and if Crawford, despite his honest intentions, entered into the conspiracy with them, as charged, and did afterwards divide the spoil with them, the jury should not have been instructed that as to one fact or circumstance they might find him innocent, while as to the other facts and circumstances constituting the offense charged in the indictment he was to their satisfaction proven to be guilty.

The testimony of Crawford himself (Rec., 185–187) and of Lorenz (Rec., 129–130) shows that the instruction prayed for was based upon assumptions of fact not warranted by the evidence in the cause.

The instruction assumes that there was evidence

tending to prove an arrangement under which "at the end of each fiscal year a reasonable and proper deduction should be made from the amounts payable to the company under said contract, on account of its not furnishing straps, etc." No such evidence can be pointed out in the record.

This instruction, as well as the others asked for by defendant, proceeds on the theory that each and all of the facts and circumstances set out in the indictment, not as constituting the offense of conspiracy, but charged either as overt acts or as the means by and through which the conspiracy was to be carried into effect, are material and essential to the establishment of the offense charged, and that the failure of the Government to prove any one of them entitles the defendant to an acquittal. It ignores the fact that the offense charged is conspiracy, the unlawful agreement between the defendants, and that this may be shown by facts and circumstances as well as by direct evidence. Overt acts can not be relied on as proof of the conspiracy. That must be proven independent of the overt acts done in pursuance of and to effectuate it. "In prosecutions for criminal conspiracies," says Judge King, "the proof of the combination charged must almost always be extracted from the circumstances connected with the transaction which forms the subject of the accusation. In the history of criminal administration, the case is rarely found in which direct and positive evidence of criminal combination exists. To hold

that nothing short of such proof is sufficient to establish conspiracy would be to give immunity to one of the most dangerous crimes which infest society. Hence, in order to discover conspirators, we are forced to follow them through all the devious windings in which the natural anxiety to avoid detection teaches men so circumstanced to envelope themselves and to trace their movements from the slight but often unerring marks of progress which the most adroit cunning can not so effectively obliterate as to render them unappreciable to the eye of the sagacious investigator, etc." (*Comm.* v. *McClean*, 2 Parsons, 368–369, cited in 2 Wharton Crim. Law, sec. 1398, note.)

If the jury believed, beyond any reasonable doubt, that Crawford had entered into the conspiracy charged in the indictment, and that acts had been done by him or by his confederates to carry that conspiracy into effect, they were bound to find him guilty, even although they further believed that "Crawford in good faith, expected and intended that the Postal Device and Lock Company should furnish shoulder straps with the satchels." And if having found that Crawford had entered into such conspiracy they further found that the money derived from the contract had been distributed among the conspirators, they failed to find that "Crawford had agreed with Machen and Lorenz, or with one of them, that said payments should be made by said Lorenz out of the moneys so to be received by him" (as asked in

instruction No. 13), they should still find Crawford guilty as charged in the indictment.

SIXTEENTH.

To the ruling of the court, that the question propounded to defendant's witness Polk, for the purpose of contradicting the defendant Lorenz, as witness for the Government, should, under the peculiar conditions presented, be stated in the exact words of the statement made by Lorenz.

> It is a settled rule of practice that when a witness is cross-examined on a matter collateral to the issue he can not, as to his answer, be subsequently contradicted by the party putting the question. The test of whether a fact inquired of in cross-examination is collateral is this, Would the cross-examining party be entitled to prove it as part of his case, tending to establish his plea? (Wharton on Evidence, sec. 559; Wharton on Criminal Evidence, sec. 484.)

It appears by the record (p. 151) that Polk was called and examined as a witness for the defendant, and after being examined on other matters, "Thereupon the witness was asked by counsel for the defendant whether in a conversation with said Lorenz in Judiciary square, in 1903, Lorenz said to him, the witness, in substance, that it would be well for Crawford to testify at the trial that the $1,465 and some cents was sent back to him as repayment for the straps, as a payment on account of the straps for those 5,000 bags."

This question, apparently, could not have elicited any reply that would tend to support Crawford's plea of "Not guilty" in this case. Lorenz was not on trial. He had appeared as a witness for the Government and had admitted on the witness stand his participation in the crime. What passed between Polk and himself, at the date given, could not affect Crawford in any way. The testimony was admissible only on the ground that it tended to impeach the veracity of the witness Lorenz. It must appear that Lorenz had made a statement as to this conversation with Polk, which Polk's testimony would tend to contradict. It must have also appeared that the statement made by Lorenz was one which in some way related to the substance of the issue in this case. It was not competent to show that as to some matter, wholly disconnected with the subject of the inquiry here, Lorenz had made false statements. He could be impeached by proving that his general reputation for truthfulness was bad, but not by proving instances in which he had willfully lied.

To impeach a witness by showing that he had made a statement, which he now denies having made, his mind should be directed to the statement itself by repeating it so distinctly and unambiguously that he can not fail to recognize and understand it, and be able unequivocally to admit or deny it. Now it appears that Lorenz had testified at a previous trial of this case, and had been examined on cross-examination as to this matter, and that his former

testimony was read to him during the present cross-examination (Rec., 144), and it there appears that Lorenz had made a statement, either to Crawford or to Polk, he does not remember which, in which he said "that there was a coincidence that might be used in case a person wanted to prove that the money—that according to this contract—if I had to show that I had furnished the straps under this contract, that I would pay that much back and account for the money that I paid to Mr. Polk." He had not proposed or suggested that Crawford should make such a defense.

But let us look more closely into the transaction as it actually occurred in the court, and see what was testified to, and what the ruling of the court was on that testimony, and on the questions propounded by counsel for defendant. The object of counsel was to cast doubt on the truthfulness of Lorenz who had testified for the Government. To do this, he proposed to show that Lorenz had made a criminal proposal to Polk, who was Crawford's partner in business. On cross-examination of Lorenz (Rec., p. 131) "the witness stated that he remembered a talk that he had with Polk during the Groff trial, at Polk's office, *but he did not remember seeing him in Judiciary square in Washington.*" The witness was then asked the following question by counsel for defendant: "Did you not, in the fall of the year 1903, in Judiciary square, say to Mr. Polk in substance that you had found that you had discovered that the straps for 5,000 bags at 29½ cents would amount to

almost if not exactly what you had sent back to Crawford of the $5,444.35, and say further to Mr. Polk in substance that it would be well for Crawford to testify at the trial that that $1,465 and some cents was sent back to him as repayment for the straps, as a payment on account of the straps for those 5,000 bags," and the witness answered he did not. Being then asked by counsel for the defendant whether he said anything on that subject to Mr. Polk, the witness said he may have said something on that subject, but did not remember what it was. He was then asked as to his testimony at a former trial of this defendant, and his former testimony was read to him. Counsel for defendant, at a later stage of the trial, called as the impeaching witness Mr. James K. Polk, who, after a lengthy statement, was asked by counsel (Rec., p. 151) "whether in a conversation with said Lorenz in Judiciary square, in 1903, Lorenz had said to him, the witness, in substance that it would be well for Crawford to testify at the trial that the $1,465 and some cents was sent back to him as a payment on account of the straps for those 5,000 bags."

This question was objected to by the Government, and the objection sustained by the court, but the question appears to have been repeated to the witness, who answered "that he could not say whether Lorenz said those exact words or not."

Now observe, Lorenz had distinctly stated that he "did not remember seeing Polk in Judiciary square in Washington."

The question being repeated by counsel, Lorenz denied that the conversation as recited by counsel ever occurred. This conversation was placed by counsel in Judiciary square; Lorenz did not remember any conversation in that place, and for that reason could not be contradicted as to that; and the question was objectionable on that ground.

Again, in the question put to Lorenz the conversation is stated to have occurred "in the fall of the year 1903," while in the question put to the impeaching witness, Polk, it is described as having occurred "in 1903;" and for that further reason the question was objectionable.

Again, the question put to Polk is merely as to its being well for Crawford to testify to certain matters, while in the question put to Lorenz there is a lengthy recital of the reasons that had led to Lorenz's discovery. These things occurring in the presence of an intelligent and vigilant judge, who discerned the gross injustice thus sought to be practiced on Lorenz, he said "that the words 'in substance' should not be used, that the counsel should put the exact words in the witness's mouth." An admonition which the learned counsel now seeks to turn to his advantage by making it the subject of an assignment of error. The court, obviously referred to the wide discrepancy, both in form and in substance, between the question put to Lorenz on his cross-examination and the question now put to Polk with the view of contradicting Lorenz. The question put to Polk was

plainly inadmissible on examination in chief, because it had no relevancy to the issue. The only ground on which it could be admitted was for the purpose of impeaching Lorenz. To make it relevant for this purpose it was necessary, first, to lay the groundwork by asking Lorenz as to the alleged conversation, and to do this properly Lorenz should have been asked as to a conversation which took place at a time, place, and under conditions which should have been stated to him. This, we have seen, was done, and Lorenz had stated that he "did not remember seeing him (Polk) in Judiciary square in Washington." The time given was "the fall of the year 1903." The groundwork having been laid, the impeaching witness, Polk, was asked, not the question put to Lorenz, but "whether, in a conversation with said Lorenz, in Judiciary square, in 1903, Lorenz said to him, the witness, in substance, that it would be well for Crawford to testify at the trial, etc."

Now, this question asks not for the conversation, or for Lorenz' speech, but for the inference, or construction which Polk—who was Crawford's partner, and hence in fullest sympathy with him—had drawn, or might then draw, from Lorenz's words. The question put to Polk did not even locate "Judiciary square" as being in Washington, as the question put to Lorenz had done. It might have been in Toledo, or elsewhere. It was under these conditions that the learned judge presiding at the trial told the counsel that he should give the "exact words" of Lorenz's testimony.

An "undesigned coincidence" is suggested here, which has a material bearing on the second and the twenty-first assignments of error, which relate to Crawford's conscious participation in the fulfillment of the unlawful agreement charged in the indictment. It will be considered under the twenty-first assignment.

The whole matter as to whether questions are "fit and proper to be asked" is in the discretion of the court, and its rulings are not reviewable on writ of error. (*Rea* v. *Missouri*, 17 Wall., 532; *Storm* v. *United States*, 94 U. S., 76; *Johnston* v. *Jones*, 1 Black., 209.)

SEVENTEENTH, EIGHTEENTH, NINETEENTH, AND TWENTIETH.

The substance of these several assignments, which it has seemed best for the defendant's interest to be considered together, is stated in very argumentative fashion on defendant's brief, and motives and purposes are imputed to the witness Lorenz which the evidence in the cause does not warrant.

It appears that a conference was held at the house of Mr. Worthington, counsel for Crawford, and at that conference there were present Mr. Crawford and his counsel, Mr. Worthington, and Mr. Lorenz and his counsel, Judge Kumler.

Mr. Lorenz, in his testimony (Record, p. 132) fixes the time of the conference as "about the time of the beginning of the Groff trial," and he gives his recollection of what occurred there.

Mr. Crawford, in his testimony (Record, p. 166) fixes the time of the conference as "after the spring of 1903, and just before the Groff trial," and his statement of what occurred is confined to his replies to certain questions, which appear to be directed toward the contradiction of Mr. Lorenz.

The indictment on which Crawford was tried and convicted appears to have been filed in open court on April 3, 1905. (Record, p. 25.)

It is to be regretted that this incident should have been ventilated in the course of this trial. Nothing could be more reasonable and proper than that the counsel of these two defendants should at the earliest stages of preparation of their case have had a joint conference at which their respective clients should be present and the fullest disclosures consistent with conscious innocence be made by them to their counsel. Such disclosures, and indeed all that took place at such conference, was in the highest degree confidential. Each participant was under the strongest bonds to keep inviolate whatever transpired that might tend to inculpate either of the defendants.

It appears (Rec., p. 132) to have been elicited from the witness Lorenz on his cross-examination by defendants' counsel, and it might well be questioned whether matter thus brought into the case could properly be contradicted by the party so introducing it. The solemn sanction of the conditions under which the disclosures of either participant were made would seem to warrant immunity from the conse-

quences of betrayal by any other participant. Lorenz, after being cross-examined by defendants' counsel, was then reexamined by the district attorney, and by him was asked why he, Lorenz, had not made a statement to Mr. Worthington, on the occasion of this visit, "of your side of the case;" to which Lorenz replied:

> Because I thought his client was deceiving him in the statement of the case, and I thought I had better let them get together first, or let the two attorneys get together; and that was the result of Mr. Kumler's and my conference—"you attorneys had better get together and define a programme." (Rec., p. 133.)

The court allowed, in the absence of any objection by the Government, the cross-examination of Mr. Lorenz by counsel for defendant, but when that counsel proposed to examine Mr. Crawford, then, on objection by the Government, the court declined to allow the questions to be answered.

If, before trial, two or more defendants can get together with their counsel and there make statements to each other which on the trial of the case against them they could introduce in evidence, the trial of causes would become a very vain and idle farce. If, under the guise of contradicting each other, each could have the opportunity afforded him of introducing in evidence all the statements made at such conference which tended to his exculpation, it could easily be so arranged as that all would be acquitted.

The learned counsel for defendant sought to justify his offer of the testimony by stating that—

> He offered the testimony on two grounds—first, to show the conduct of the defendant after it became known that these charges were made against him and after he had been indicted; and, second, to show that before Lorenz went to the district attorney's office he, Lorenz, had been advised that the defendant would testify to this fact.

But, show these things how? By showing what the defendant Crawford had done after he had placed himself under the wise and intelligent advice and guidance of his experienced and learned counsel. And as to the second ground: Could it have been proven by Crawford what he may have told Lorenz as to what his own testimony would be on the trial? Could Crawford have manufactured evidence for himself in advance by telling Lorenz something for the purpose and with the view of thereafter testifying in his own behalf that he had told him so? But counsel frankly state how he expected to use this testimony if it had been admitted. He says:

> All this excluded testimony taken together, if the jury had been allowed to hear it, certainly might have satisfied the jury that Lorenz was trying to get even with Crawford for not helping him break the net in which he found himself entangled. That is bias, and bias is not collateral.

If that was the wicked scheme of Lorenz, why was it not discovered at this friendly conference at Mr.

Worthington's house, when the two clients and the two counsel were assembled to confer upon and establish their lines of defense? When did the horrifying truth first break upon the guileless mind of this innocent defendant? We have seen that the indictment on which Crawford was tried and convicted was not filed until *April 3, 1905*. There had been an earlier indictment found which appears to have been filed *July 31, 1903*. But here we find all these parties with their chosen counsel, in conference, according to Mr. Crawford's testimony (Rec., p. 168) "after the spring of 1903, and just before the Groff trial." Why this preparation for trial at the house of Crawford's counsel months before the first indictment was filed? Does conscious innocence prepare to defend itself, before accusation is brought against it?

Observe how it was proposed to get before the jury Crawford's declaration of his own intention as to the money which had been paid to him. Lorenz was asked on cross-examination, "whether Crawford did not say on that occasion (the occasion of the conference at Mr. Worthington's house) that he, Lorenz, understood that the remittance which he, Lorenz, was making back to him, Crawford—that Lorenz understood that he was to keep them, and it was a secret, *but that as matter of fact he, Crawford, intended to account to his company for them.*" And then Crawford was asked, on direct examination by his counsel, whether he, Crawford, had said so. And,

if he had been allowed to answer, he would have stated that he had said so.

The eighteenth and the nineteenth assignments relate to other statements alleged to have been made at the same conference. The twentieth assignment relates to a visit, said to have been made by Lorenz to Crawford's office, at night, in the spring of 1903, when Lorenz asked Crawford to cancel the contract between Lorenz and the Postal Device and Lock Company and deliver it to Lorenz.

The conspiracy was at an end; the conspirators were alarmed at the imminent exposure; each was seeking for himself a way of escape. How could their mutual disclosures or criminations and recriminations of each other, at that time, be admitted in evidence for their protection or for the purpose of casting upon each other the responsibility for the crime?

TWENTY-FIRST AND TWENTY-SECOND.

The refusal of the court to give the instructions Nos. 13 and 15 asked for on behalf of the defendant.

Instruction No. 13 was that the payments made by Lorenz to Machen were not to be considered by the jury against the defendant Crawford—

> unless the jury should be satisfied by the evidence beyond a reasonable doubt that before they were made the defendant had agreed with Machen and Lorenz, or one of them, that such payments should be made by Lorenz out of the money received by him.

Instruction No. 15 was that the payments made by Lorenz to Crawford should be considered by the jury—

> only in so far as such payments might tend to throw light upon the question whether the defendant was a party to the alleged agreement between Lorenz and Machen that a part of the money received by Lorenz should be paid to Machen.

When these instructions were asked for, all the evidence on both sides was fully before the jury. They had heard it all, and the vigilant and intelligent judge had heard it all.

The judge had considered all the instructions that were presented on both sides, and he gave to the jury his charge (Record, 213–224), which embraced the law applicable to every question involved in the case. That charge referred distinctly to the subject-matter of these instructions Nos. 13 and 15, although it did not state it in the terms employed in those instructions. The offense charged in the indictment was conspiracy, which further involved one overt act toward the execution of the conspiracy. Every fact material to the commission of that offense had to be proven beyond a reasonable doubt. Incidental facts, not material to that offense, did not have to be so proven. Both rejected instructions presented alleged facts, which, if true, were not at all material to the offense charged, and required the jury that unless they found those facts they could not find the defendant guilty of the charge. Instruction No. 13 told the jury that they must not

consider the fact of the payments made by Lorenz to Machen against this defendant unless they found that this defendant had agreed with either Machen or Lorenz, or both, that "such payments should be made by Lorenz *out of the money received by him.*"

If that instruction had been given, and the fact had appeared, as it did, that Lorenz had made three payments to Machen, but had made them by drafts or checks, it would then have been argued that these vehicles of payment were not "out of money received by him," but were out of the general bank account of Lorenz—that the instruction required that the payments should have been made out of the specific money received by Lorenz, and none other. If Machen had been indebted to Lorenz on some private account, and had, with Machen's consent, applied Machen's share of the money to the payment of such indebtedness, that that was not the payment required by the instruction.

The indictment charged (Record, p. 32) that the agreement between all the parties was—

> That all the money and each of the said several sums of money which, in accordance with and by virtue of the contract between the P. D. & L. Co. and the said Lorenz, might and were to be, from time to time, paid by the said company to the said Lorenz, out of all payments made to the said company by the United States for such of the said satchels as were to be sold and furnished to the said department under and in accordance with the said contract, * * * should be divi ed be-

> tween them, the said William G. Crawford, the said August W. Machen, and the said George E. Lorenz, in certain proportions * * * upon a plan * * * whereby the share and shares of the said money thus to be allotted and paid to the said Machen * * * should be transmitted to him, the said Machen, by and *through the agency of the said William G. Crawford and the said George E. Lorenz*, etc.

So that the instruction was based upon a theory that was not in accordance with the charge made in the indictment, and the evidence was in accordance with the charge made in the indictment.

Instruction No. 1 was to the effect that, although the jury might believe every other fact in the case which the evidence tended to prove, yet, they must not consider the fact that Lorenz had paid money to Crawford in any other light or for any other purpose than as tending to show that Crawford had agreed that a part of the money received by Lorenz should be paid to Machen.

Now, the evidence tended to show that Lorenz had paid money to Crawford by three several payments. One of these Crawford had directed him by letter to "send by express," by another "send New York exchange" (Record, p. 124), and the third by "Cashier N. Y. to order bearer by registered mail." (Record, p. 123.) These instructions were not given in the body of these several letters, but were in each instance given by typewritten memoranda, pinned to the letters. Crawford does not deny, but admits, as

to two of these pinned memoranda, but he denies as to the third. (Record, pp. 184, 187, 188.)

The letters appear on pages 96, 266, and 267 of the record. Experts have examined the letters and the memoranda and prove that they were all written on the same typewriting machine. (Record, p. 200.)

Crawford testified that "he had simply a bowing acquaintance with Machen while he was deputy auditor; that Machen had never put foot in his office, and that he never went to lunch with him." (Record, p. 155.)

The chief clerk of the department, and a laborer employed there, testify that one of them had seen Machen in Crawford's room at different times between 1893 and 1897, and the other that he had seen Machen in the office of the defendant frequently in 1895, and they would sometimes go out together about lunch time, and that defendant would say that they were going to lunch. (Record, p. 120.)

Now, this evidence was all before the jury when these instructions were asked for. They heard all the explanation that Crawford was able to make of the pinned memo. directing the secret and unusual method of remitting the money to him by Lorenz. They heard his denial of close acquaintance with Machen. They heard all of Lorenz's testimony, giving a full account of the agreement and its execution, and yet they were expected to efface all this from their minds and weigh the specific facts involved in these instructions separately and apart from all the other evidence in the case.

The several pieces of evidence laid before a jury so correlate as that the probative effect of each is necessarily affected by that of every other, and to ask a juror to say exactly to what extent each piece of evidence contributed to the judgment formed in his mind from the whole would be demanding of him a degree of qualitative and quantitative analysis of his mental operations which would be hardly possible. They believed that the unlawful agreement had been formed by all of the three parties; that money had been received from the Government under a contract which Machen, the Government agent, had contributed largely to procure; that this money had been distributed between all the parties; that the methods of distributing it were very suspicious; that Machen, the Government agent, had received his full share, and that this defendant had been the inspiring, directing, and controlling agent in the whole scheme. Convinced by the evidence of these facts, they should not have been required to assign to each piece of evidence its due and actual probative effect. But, further, these instructions would tend to fix the mind of the jury upon one or two isolated facts, and require them to determine their probative force altogether apart from the other evidence in the case.

Mr. James K. Polk appears from his testimony (Record, p. 148) to have been the law partner of Mr. Crawford, and his intimate friend and counselor. He appears to have acted as the counsel for Mr. Crawford at an early stage of this matter, when Crawford made a sworn statement before the Assistant

Postmaster-General and others as to the entire transaction (Record, p. 255), as to which Mr. Crawford has testified. (Record, p. 182.)

Now, it was to this man, who was the friend, the agent, the counsel of Crawford, that Lorenz is said to have made the criminal proposal in Judiciary Square in 1893—

> that it would be well for Crawford to testify at the trial that the $1,465 and some cents was sent back to him as repayment for the straps, as a payment on account of the straps for those 5,000 bags.

This was two years before the first trial and at a time when the parties were preparing for their defense. What inquiry did that suggest to the mind of the jury? Why did Lorenz, who knew that Crawford was innocent and did not need manufactured and fictitious evidence, venture to submit such a proposal to Crawford's friend and counsel? How did Polk, who also knew of Crawford's innocence, receive such a proposal? Did he reject it with disdain and contempt? Did he not at once communicate it to his friend Crawford as a base proposal? On these matters the jury were not informed. They only knew that a man who was charged as a coconspirator with Crawford, and was indicted jointly with him, had thought it wise and prudent to make such a proposal privately to Crawford's friend and counsel and that—although Mr. Polk could not repeat the exact words of the proposal and was

not allowed to give his construction of those words—so far as his further examination shows he was not even asked as to how he received the proposal or whether he had communicated it to Crawford. Were not the jury warranted, by their experience in the usual and ordinary course of human affairs, in believing that such a proposal would not have been made by Lorenz to Polk unless they each knew that Crawford's situation was such that his connection with this matter, with Lorenz and Machen, stood in great need of explanation? Counsel has assigned as a reason for the admission of certain testimony offered by him that it tended to show Crawford's conduct. How far do these facts tend to show Crawford's conduct, by showing that in the minds of his friends the exigencies of his case were such that the actual, genuine evidence available would not suffice and that artifice must be employed to use fictitious evidence?

TWENTY-THIRD.

This is to the refusal of the court to discharge the jury from the further consideration of the case, when counsel for the Government, in his argument to the jury, told them that Machen had pleaded guilty.

In his brief, on this point, counsel for defendant has apparently deemed it proper to make the charge that "counsel for the Government, in the closing argument to the jury, *undertook to influence their judgment* by giving them to understand that since Lorenz had testified that he was guilty, and Machen had pleaded guilty, the defendant must be guilty, too."

This imputation of an unworthy motive to the counsel for the Government who had made to the jury the statement referred to is unwarranted by the facts disclosed by the record and is without foundation in truth.

It appears (Record, p. 205) that before the counsel for defendant closed his address to the jury, and while he was commenting upon a statement made by the witness Lorenz, in the course of his examination, he turned round and, addressing himself to the special counsel for the Government, he said, "I wonder, I say, if you will tell the jury that you believe that yarn." To which inquiry the special counsel for the Government replied, "I do not express my personal opinion to the jury upon any matter; I will tell them (you) that I believe that the Groff case was exactly like this case and that Lorenz was a distributer in both."

Counsel for defendant then asked the court to direct the jury to disregard that statement, but the court told the stenographer who was reporting the case to "let the record show that Mr. Worthington turned and directed his remarks to Major Conrad. The motion is overruled."

After the counsel for defendant had closed his address the special counsel for the Government, before proceeding to discuss the evidence in the case, opened his address to the jury by saying:

> The indictment, or the one we are more concerned with here, charges that Machen and Lorenz and Crawford entered into an unlawful agreement to defraud the United States—a

> conspiracy, they call it. Machen has pleaded guilty; Lorenz has pleaded guilty—

when he was arrested by the motion made by counsel for the defendant to the court that the jury be instructed that they are not to consider that statement. To this the counsel for the Government said: "It has been stated a dozen times here. The gentleman himself has stated it."

To this statement no denial was made by counsel for defendant, as appears by the record.

Counsel for defendant then submitted to the court his motion to discharge the jury. The court instructed the jury not to consider the remark made by the counsel for the Government.

After further colloquy, as is shown by the record, the counsel for the Government resumed his address, and prefaced it by saying:

> I hope I shall not transgress when I say to you that Lorenz has appeared before you on the witness stand and confessed this business, and told you how it occurred. The third man, Crawford, has plead not guilty and you are trying him. That is the situation. My reference to Machen was not that you might consider it against this man at all. You could not. But it is a fact that you all know, and it has been repeated a dozen times in this case.

And again, the record shows no denial from anyone of the statement as to the fact that the matter had been referred to, and repeatedly, during the trial.

Counsel for the Government had stated to the jury that he had not intended that the matter stated by

him should be considered by the jury as a fact which could be considered by them against the defendant Crawford. And that disclaimer of any intention to influence their judgment, in their consideration of the case, he thought should have been accepted as sufficient. He merely recited the matter, as one already fully within the knowledge of jury, in connection with other matters forming a connected history of the case, as he might have referred to any historical fact which illustrated the general situation, the particular features of which were about to be examined.

In considering this incident, under the solemn aspect in which it is presented by this assignment of error, whether in its legal or its ethical relations, it is only just and proper that it should be considered, not only in connection with the declared purpose and intent with which it was made, but also in connection with the course pursued, without objection, during the trial, and the facts disclosed by the record.

Lorenz, one of the defendants to this case, was called as a witness for the Government (Record, p. 122) and testified "that he is a defendant in the two conspiracy indictments on trial, that he was then serving in the Moundsville Penitentiary a sentence from this court."

On the cross-examination this witness was asked by counsel for the defendant if he was the George E. Lorenz referred to in a book of the Supreme Court of the District of Columbia, which was produced and

exhibited to him, against George E. Lorenz, August W. Machen, Martha J. Lorenz, Diller B. Groff, and Samuel A. Groff, and if he was the person of that name who was convicted in that case and sentenced on the 27th of February, 1904, to be imprisoned in the penitentiary for two years. (Record, p. 124.)

Here there was for the first time introduced into this case the fact of the trial and conviction of this witness, with others, in the case of the United States *v.* Machen and others. There was no connection or relevancy between that case and the one on trial that could render such testimony proper. But the distinguished counsel for the defendant, who makes no move on the board without a clear aim and purpose, thought it needful for the interest of his client to introduce this alien fact.

It is referred to in this connection merely as illustrating the unlimited range of inquiry, asserted by counsel for defendant, and allowed by counsel for the Government, in order that no room might be afforded for complaint as to restrictions imposed upon defendant, in the efforts made on his behalf to relieve him from the weight of the case made against him by the evidence adduced by the Government.

One use (the propriety of which calls for no comment here) the counsel for the defendant has sought in his brief in this court to make of that trial. On page 71 of that brief he asserts that the same counsel, of whose statement to the jury in this case he complains, had, in the Machen case, "obtained

the conviction of Machen by practically threatening to have an indictment found against any juror who should hold out for an acquittal." A reference to the record he cites (*Lorenz* v. *U. S.*, 24 App. D. C., 377) will enable this court to determine whether in this statement the learned counsel has allowed his zeal for his client to make him forget the duties of justice and courtesy to his brethren of the bar.

But the zealous counsel appears to have forgotten one incident in the course of these proceedings which if he had but recalled it might have saved him much of the labor he has spent on this part of his brief.

The fact that Machen had plead "Guilty" to this indictment was conveyed to the jury by the court, and with the acquiescence, if not with the consent, of the counsel for the defendant.

At the hearing of this case on appeal in the Court of Appeals of the District of Columbia, Mr. Justice McComas, who had acquired a large experience in the practice, in this jurisdiction, by a long service as a member of the Supreme Court of the District, when this same point was urged by the present counsel for defendant, inquired whether the indictment had not been given to the jury when they retired to consider of their verdict. He was told that it had. He then caused that indictment to be brought to the bench, and there he pointed out that the fact of Machen's plea of guilty was indorsed on the indictment and that such indorsement had conveyed to the jury full knowledge of the fact.

The indictment is in this record, but without the indorsements thereon. I have obtained from the clerk of the court a certified copy of the indorsements, and also an affidavit as to the uniform practice here of allowing juries in criminal cases to take the indictments with them in their retirement. By the indorsements it will be seen that the defendants are there indicated by numbers 1, 2, 3. Machen is No. 1, Lorenz is No. 2, and Crawford is No. 3. The indorsements show that No. 3 plead "Not guilty," and No. 1 plead "Guilty." They are here filed as Exhibits A and B. So that if it be true that counsel for the government did actually commit an inadvertent error, it was harmless, because of the communication of the same matter to the jury by the court in a far more solemn and impressive form.

CHARLES J. BONAPARTE,
Attorney-General.

HENRY M. HOYT,
Solicitor-General.

HOLMES CONRAD,
Special Assistant to the Attorney-General.

]Exhibit A.]

(Indorsed:) Filed in open court April 3, 1905. J. R. Young, clerk. No. 24688. *United States* v. (1) *August W. Machen*, (2) *George E. Lorenz*, and (3) *William G. Crawford*. Violation of section 5440, R. S. U. S., as amended. Witnesses: Walter S. Mayer, George Robertson, R. J. Wynne, William E. Colt, H. L. Halstead, S. B. Carr, Henry Humphry, Harry W. Hadley, James J. Burke. A true bill. Geo. S. Cooper, foreman. 5/23/05, No. 3: Plea, N. G. Min. 39, p. 465. 5/23/05, No. 1: Plea, guilty. Sentence, penity. 2 years. Min. 39, p. 465. 6/22/05, No. 3: Jury disagree. Min. 39, p. 496. 12/19/05, No. 3: Verdict, guilty on first count only. Min. 41, p. 155. 12/30/05, No. 3: Sentence, penity. 2 years. Min. 41, p. 163.

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

I, John R. Young, clerk of the Supreme Court of the District of Columbia, hereby certify that the foregoing is a true and correct copy of the endorsements which appear on the back of indictment No. 24688, wherein the United States is plaintiff and William G. Crawford et al. are defendants, as the same remain and appear upon the files and records of said court.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 8th day of October, A. D. 1908.

[SEAL.] JOHN R. YOUNG, *Clerk.*

[Exhibit B.]

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,

District of Columbia, ss:

I, Frank W. Smith, being duly sworn, depose and say that I have been an assistant clerk of the Supreme Court of the District of Columbia since August 31, 1893, during which time I served as clerk in the criminal branch of said court for thirteen years, and that it is the custom in the trial of criminal cases for the jury when they retire to the jury room at the close of a case to consider their verdict to take with them in every case the original indictment upon which the defendant is being tried, and further that I do not remember during my service in said criminal court of any case where this custom was not followed.

FRANK W. SMITH.

Subscribed and sworn to before me this 8th day of October, A. D. 1908.

JOHN R. YOUNG, *Clerk.*

[SEAL.]

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CRAWFORD v. UNITED STATES.

CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

No. 92. Argued October 13, 14, 1908.—Decided February 1, 1909.

An agreement by an official of the United States under which he secretly receives any portion of what is paid for supplies furnished on his requisition is one to defraud the United States within § 5440, Rev. Stat.

An indictment which sets forth the details of a corrupt contract between defendant and a government official by which, from its nature, the Government would be defrauded, is sufficient to sustain a charge of conspiracy under § 5440, Rev. Stat., even if it does not allege in what particular manner the conspirators intended to defraud the United States.

In criminal cases courts are not as exacting in regard to the character of objections as in civil cases, and will notice error in the trial of a criminal case although the question may not have been raised in exactly the proper manner at the trial. *Wiborg* v. *United States*, 163 U. S. 632.

Where defendant was on trial for conspiracy under § 5440, Rev. Stat., an objection to a juror on the ground that he was a salaried official of the United States held in this case to reach to the qualifications of the juror by reason of his relations with the Government although he was not a salaried officer thereof.

The common law in force in Maryland on February 27, 1801, remains in force in the District of Columbia except as inconsistent with statutes subsequently enacted.

Under the common law one is not a competent juror who is master, servant, steward, counsellor or attorney of either party, and statutory provisions of qualifications, not inconsistent with this rule, do not strike it down.

In the District of Columbia jurors must, at least, have the qualifications stated in § 215, and are exempt under § 217 of the Code, but these sections are not inconsistent with, or exclusive of, the common-law rule that one in relation with either party is incompetent.

Bias disqualifies a juror, and bias is implied in the relation between employer and employé and actual evidence thereof is unnecessary.

An employé of the United States is not competent as a juror where defendant is on trial for conspiracy against the United States under § 5440, Rev. Stat.

Where a letter written to defendant is admitted in evidence for the purpose of showing the moral character of defendant and that he had endeavored to destroy evidence in the writer's hands so as to prevent its being used against him on the trial, the answer immediately written should also be admitted, whether written by defendant or his counsel under his direction; and defendant's own evidence in regard to the matter alleged is admissible so as to disclose the whole transaction.

There is a presumption of harm caused by errors in regard to the admission or exclusion of evidence in a jury trial which requires the reversal of the judgment unless the record clearly shows the absence of harm.

The extent to which the law officers of the Government will use evidence of persons already convicted of the crime of conspiracy for which defendant is also indicted, is within their discretion, and their action will not be reviewed by the courts; but the evidence of such witnesses is to be received with caution and suspicion, and is not entitled to the same credence as that given to ordinary witnesses.

In considering whether error in excluding defendant's evidence in a criminal trial is reversible it is not enough that inferences favorable to defendant might have been drawn from some of the admitted testimony, he is entitled to state directly on oath facts that are relevant.

While a book of accounts may be inadmissible as evidence so far as it relates to accounts between the parties it may be admissible as written corroborative evidence, and as part of a transaction, to be submitted to the jury for what it is worth.

30 App. D. C. 1, sustained as to sufficiency of indictment and reversed on other points.

On the third of April, 1905, in the Supreme Court of the District of Columbia, the defendant was indicted, together with George E. Lorenz and August W. Machen, for a conspiracy to defraud the United States, by means stated in the indictment, and in relation to a contract between the Postal Device and Lock Company, a corporation of the State of New Jersey, and the Post Office Department of the United States, by which the company was to furnish certain satchels to the department for the use of the letter carriers in the free-delivery system of the Government.

The indictment was founded upon § 5440 of the Revised Statutes of the United States, 3 Comp. Stat., page 3676, which reads as follows:

"If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, all the parties to such conspiracy shall be liable to a penalty of not more than ten thousand dollars, or to imprisonment for not more than two years, or to both fine and imprisonment in the discretion of the court."

Nearly two years before the finding of this indictment (viz.: in July, 1903), the defendant had been indicted in the same court by two different indictments, relating to the same general subject-matter as the one found in April, 1905, one indictment charging him with conspiring (together with Lorenz and Machen) against the United States, by agreeing to present false bills of account to the Post Office Department, in relation to the contract mentioned, for supplying the department with satchels for letter carriers, in alleged violation of § 5438 of the Revised Statutes, 3 Comp., Stat. p. 3674. The other indictment was against the defendant individually for presenting false claims to a clerk in the Post Office Department under this same contract, and in violation of the same section of the Revised Statutes. Upon motion the three indictments were consolidated for the purpose of the trial of the defendant and were tried together, a severance in the conspiracy indictments having been granted upon the defendant's motion for his separate trial. The two indictments found in 1903 have been so disposed of in the court below that no question arises in regard to either.

Upon the trial the defendant was convicted, as hereinafter more particularly stated, and he then appealed from the judgment entered upon the verdict of conviction to the Court of Appeals of the District, where it was affirmed by a divided court, Mr. Chief Justice Shepard dissenting. 30 App. D. C. 1.

Upon application of the defendant this court granted a writ of certiorari, and the case is now here by virtue of that writ.

Mr. A. S. Worthington for petitioner:

That part of § 5440 which refers to conspiracies to defraud the United States cannot be held to apply to a case where an official without wrongful intention is found in a position where his personal interest is in conflict with his duty to the Government. Criminal statutes must be strictly construed and so that it may be known in advance to what classes of acts they extend. *United States* v. *Wiltberger*, 5 Wheat. 76; *United States* v. *Brewer*, 139 U. S. 278; *Todd* v. *United States*, 158 U. S. 278, 282; *France* v. *United States*, 164 U. S. 676, 682, 683; *Neal* v. *Clark*, 95 U. S. 704; *United States* v. *Britton*, 108 U. S. 199; *Spring Co.* v. *Knowlton*, 103 U. S. 49.

The juror Haley, who was challenged for cause, being in the employ of the United States, was disqualified and should not have been allowed to serve. 3 Blackstone Comm., 363; 1 Chitty, Crim. Law, 541, 542; 1 Bishop, New Crim. Procedure, § 902; *Block* v. *State*, 100 Indiana, 357; *State* v. *Berry*, Busbee, 330; *Mitchell* v. *Railroad Co.*, 63 Georgia, 173; *Atlantic Coast Line R. Co.* v. *Bunn*, 58 S. E. Rep. 538, 539; *Hubbard* v. *Rutledge*, 57 Mississippi, 6; *Louisville &c. R. Co.* v. *Mask*, 64 Mississippi, 738; *Railway Co.* v. *Cook*, 37 Nebraska, 435, 437; *N. P. R. Co.* v. *Herbert*, 116 U. S. 642.

The trial court committed a prejudicial error by allowing the prosecution to prove as part of its case in chief that the defendant had taken away from the office of the Fabrikoid Company certain letters and refusing to allow the defendant to explain why he took them, or what he did with them, and in allowing the prosecution to put in evidence Aspinwall's letter to Crawford charging the latter with abstracting a part of the files of the Fabrikoid Company and refusing to allow the defendant to offer in evidence the reply to that letter written at Crawford's request by his counsel.

The trial court should have allowed the defendant to intro-

duce in evidence the entries in his account book from page 24 to page 31, and certainly to exhibit to the jury the specific entries in that book relating to his financial transactions with Lorenz in connection with the contract of June 25, 1902, between the Postal Device and Lock Company and the Post Office Department.

The Attorney General and *Mr. Holmes Conrad*, Special Assistant to the Attorney General, with whom *The Solicitor General* was on the brief, for the United States:

The facts charged, without more, constitute a fraud on the Government and are sufficient to show that the official action of the officer in question was influenced by the agreement. *Wardell* v. *Railroad Co.*, 103 U. S. 658.

A conspiracy is sufficiently described as a combination of two or more persons, by concerted action, to accomplish a criminal or unlawful purpose, or some purpose not of itself criminal or unlawful, by criminal or unlawful means. *Pettibone* v. *United States*, 148 U. S. 203. The indictment charges that each of the acts done by the defendants, and by either of them, was done in pursuance of the unlawful agreement, and was done to defraud the United States.

It is not material to the offense charged that the United States should have been injured thereby. *Hyde* v. *Shine*, 199 U. S. 81.

The juror Haley was not a salaried officer of the Government and was therefore not disqualified. *United States* v. *Smith*, 124 U. S. 532; *United States* v. *Barber*, 21 D. C. 456. Even were Haley held to be in the employ of the United States, that fact would not disqualify him. The common-law qualifications of a juror are not in force in the District of Columbia. Congress has, by statutory enactment, prescribed the qualifications of jurors in the District and among those qualifications there does not appear the common-law feature of servant or even employé. Code, D. C., §§ 215, 217. The common law must be held to have been replaced by the two sections above quoted.

The trial court committed no error in refusing to admit the

letter written by defendant's counsel to Aspinwall. The trial court alone has discretionary power to determine the order in which the proof in a case shall be admitted, and it is no abuse of such discretion to hold that the defendant shall not introduce his evidence until the prosecution has, in regular order, offered its evidence. The court also properly excluded the proffered explanation by the defendant as to his motive in taking the letter from Aspinwall's files. Wharton on Evidence, § 35; *Ibid*, 482.

MR. JUSTICE PECKHAM, after making the foregoing statement, delivered the opinion of the court.

The defendant was convicted on the first count of the indictment found in April, 1905 (which contained six counts), and was acquitted on the fifth and sixth counts. The court having previous to the trial sustained a demurrer to the second, third and fourth counts, there is nothing left under this indictment except the conviction of defendant on the first count, and the question to be considered at the outset is as to the sufficiency of that count. The grounds of the demurrer were that the indictment did not set forth any offense under § 5440 of the Revised Statutes of the United States, nor did it set forth any offense under any statute, or at common law; that as to the first count, it did not appear how the Government could have been defrauded by the alleged scheme of conspiracy, and that it is not alleged in the indictment that any payment to Machen under the agreement set forth in the count was intended to influence Machen's official action, and it is not alleged that the Government was to pay more than it would have had to pay if the alleged agreement between the defendants had not been entered into, and it is not alleged that the contract was not honestly awarded. These questions may be considered, notwithstanding the defendant, when his demurrer was overruled, pleaded over and went to trial on the plea of not guilty. See Code of District of Columbia, § 1532, p. 300.

Without going into any very great detail, it is necessary to state what in substance is alleged in the first count. It is therein averred that Machen (one of the alleged conspirators) was the General Superintendent of the Division of Free Delivery of the Post Office Department of the United States, and that the department used satchels for letter carriers, which were supplied by contract, at a certain price named therein for each satchel, and in such numbers as the department might, from time to time, require. It was the duty of the General Superintendent to keep the department advised from time to time of the approaching expiration of existing contracts for furnishing supplies, and of the necessity for advertising for bids for contracts for the furnishing of supplies, including satchels for letter carriers, and also to advise as to the matter and form of such proposed contracts, and it was his duty to use his best and honest judgment as to the number of satchels that from time to time might be required for the use of the carriers under any contract that might be made. It was his duty to examine the bills for such of the satchels as had been delivered and approve them if correct, upon which payment would be made, in due course, by the Post Office Department. The defendant and Lorenz knew fully the duties pertaining to the office of General Superintendent prior to the making of the contract mentioned.

On the sixth of May, 1902, on the advice of the General Superintendent, the department advertised for the presentation to the department of bids up to June 6, 1902, for the supplying of satchels for letter carriers for four years from July 1, 1902.

On June 3, 1902, the defendant and Machen and one Lorenz, intending to defraud the United States, unlawfully and fraudulently conspired, "knowingly, wrongfully and corruptly to defraud the United States in a dishonest manner, and through and by means of a dishonest scheme and arrangement," which is then stated. The defendant was to procure the lock company, of which he was an officer, and which was a New Jersey

corporation desiring to engage in furnishing supplies to the Post Office Department, to put in a bid for furnishing satchels for the department. He was also to procure the lock company, before the offer of the bid of the company to the department, to make a contract with Lorenz that if the bid of the lock company was accepted by the department, then whenever the lock company furnished any satchels to the department under such contract and received from the department payment therefor, the lock company would pay to Lorenz all of such amount exceeding the cost of manufacturing and delivering the same and twenty-five cents for each satchel. Pursuant to such agreement the lock company did enter into such a contract with Lorenz.

On June 3, 1902, the defendant and the General Superintendent and Lorenz, as part of their dishonest scheme, agreed that the money which was to be paid to Lorenz by the lock company should thereafter be divided between the defendant, the General Superintendent and Lorenz, in certain proportions unknown to the grand jury.

On the twenty-fifth of June, 1902, the United States, through the Postmaster General, made a contract with the lock company, by which the former agreed to purchase from the lock company at certain fixed prices so many satchels as might be needed by the department for four years from July 1, 1902.

On October 3, 1902, the defendant, in order to effect and carry out the conspiracy, presented a bill against the United States for $15,800, for five thousand satchels theretofore sold and delivered to the department, in accordance with the contract of June 25, 1902, with the lock company, and on October 13, 1902, in pursuance of the conspiracy the General Superintendent approved the bill as such Superintendent, the defendant receiving and accepting a warrant payable to the order of the lock company from the department, in payment of such bill for the amount thereof.

On the twenty-first of October, 1902, the defendant, in pursuance of the conspiracy, drew a check of the lock company

upon Spencer Trask & Company, of New York, for $5,441.36, payable to the order of Lorenz, which he sent to Lorenz.

On October 28, 1902, Lorenz having received the check and obtained the money on it, sent to Machen, the General Superintendent, the sum of $900, by means of a draft procured by Lorenz, and sent by him to the Superintendent.

From this statement it appears that the count discloses the duties of the General Superintendent and the duty that he owed to the Government in relation to a contract of the nature above mentioned. It was part of his duty to give an honest and unprejudiced judgment, whether the contract was from time to time being fairly and fully complied with, both as to the number of satchels furnished, their material and workmanship, as well as with regard to all other matters pertaining to the contract. It cannot be supposed that such duty could be fully, impartially and honestly discharged by an officer who, by reason of his private and alleged corrupt agreement with the agent of the contractor whose work he was supervising, would obtain more pay by exceeding in his requisitions the number of satchels really necessary for the department. It could scarcely be believed that he would give an unbiased and honest judgment upon the question whether the contract had been fulfilled as to material or workmanship or other detail, when, if the satchels were received, he would at once, though secretly, receive a certain portion of the sum paid by the department to the contractor for furnishing such satchels. This is not an indictment for the violation of a statute against bribery. It is for a conspiracy to defraud the United States, and when it is seen that the conspiracy consists in such a corrupt agreement as is alleged in the indictment, by which an officer of the United States is, in substance, to have a secret interest in a contract as to the fulfilling of which by the contractor that officer is to be the judge, it becomes unnecessary to aver that the interest was given him, or the money paid to him to influence his official conduct upon the very contract in question. The agreement is alleged to have been an unlawful

and fraudulent one, wrongfully and corruptly to defraud the United States. Its almost necessary result, if carried out, would be to defraud the United States. The fraud might be perpetrated by getting the contract at a higher price than otherwise would have been obtained, or, if already obtained, then the United States might be defrauded by the General Superintendent accepting improper satchels, not made of the materials, or in the manner specified in the contract, or by his requiring the delivery of more satchels than were sufficient for the wants of the department. It is not necessary in such a case as this (of an alleged unlawful and corrupt contract) to allege in the indictment which, of the various ways the Government might be defrauded, was in the minds of the conspirators, or that they all were. *Dealy* v. *United States*, 152 U. S. 539, 543. Such a corrupt agreement, if carried out, would naturally, if not necessarily, result in defrauding the United States by causing it to pay more for satchels than was necessary, or for more satchels, or possibly inferior ones, than it otherwise would, but for the corrupt agreement set forth. The indictment was sufficient. *United States* v. *Hirsch*, 100 U. S. 33; *Hyde* v. *Shine*, 199 U. S. 62, 82; *United States* v. *Keitel*, 211 U. S. 370.

Various questions arose upon the trial of the case, to some of which we will now refer.

In the course of empannelling the jury one John C. Haley was called as a juror and sworn upon his *voir dire*, and testified that he was a druggist; that he did not know the defendant; that he had formed no opinion about the case; that his drug store was a subpostal station, and that he was the clerk in charge; that he was technically a clerk of the city post office, and that he was paid an annual compensation of $300, which included all clerk hire and rental of the premises; that he was paid for the entire service of taking charge of the substation, and whatever rent may be necessary; that it is one of the things in connection with the drug business that can hardly be avoided; that a drug store, to keep up its prestige, must sell

postage stamps, and might as well get paid for it as to do it for nothing. The counsel for the defendant then challenged Haley for cause, the objection stated being that he was a "salaried officer of the Government;" but the court overruled the challenge, to which ruling the defendant duly excepted. During the organization of the jury the defendant exhausted the peremptory challenges allowed him by law, and Haley sat as a member of the jury that tried the case.

The question is, Was Haley disqualified to sit as a juror, and did the court err in holding that he was not? Section 215 of the Code of Laws for the District of Columbia, page 49, provides as follows:

"SEC. 215. QUALIFICATIONS,—No person shall be competent to act as a juror unless he be a citizen of the United States, a resident of the District, over twenty-one and under sixty-five years of age, able to read and write and to understand the English language, and a good and lawful man, who has never been convicted of a felony or a misdemeanor involving moral turpitude."

Section 217 provides that "all executive and judicial officers, salaried officers of the Government of the United States and of the District of Columbia . . . shall be exempt from jury duty, and their names shall not be placed on the jury lists." Counsel for the Government contend that the objection by defendant's counsel to the juror Haley was founded, as shown by the record, on the ground that the juror was a "salaried officer of the Government;" that the juror was not such an officer, and that if he were, that fact is only ground for a claim on his part for exemption (which he did not make), and not a ground for disqualification. Even though the juror was not a salaried officer of the Government, under *United States* v. *Smith*, 124 U. S. 525, which was founded upon a statute concerning a very different subject, and as to which different reasons might apply, and even though such an officer was only exempt under § 217, and not disqualified under § 215, yet we are of opinion that the objection actually made reaches beyond the mere question

whether technically the juror was or was not a salaried officer of the Government, and that it reaches the question of the qualification of a juror by reason of his relations to the Government as a post office clerk or employé, in a subpostal station, and whether such relations did not by law disqualify him from acting as a juror in an action to which the Government was a party. The objection to the juror was evidently by reason of his relations to the Government, however described.

In criminal cases courts are not inclined to be as exacting, with reference to the specific character of the objection made, as in civil cases. They will, in the exercise of a sound discretion, sometimes notice error in the trial of a criminal case, although the question was not properly raised at the trial by objection and exception. *Wiborg* v. *United States*, 163 U. S. 632, 659.

Under this rule the general character of the objection to the juror was fairly before the court, and therefore we think it proper to notice the alleged error in the reception of this juror and to decide it with respect to the general qualification of the juror under the law, without being tied down to the question of whether he was a salaried officer and so exempt, but not, as is contended, thereby disqualified to serve as a juror.

The question as to the qualifications of a juror in this District is not in all cases a mere local one. If the objection is not based alone upon the wording of the section of the code above cited, but also upon the common law, it becomes an important question which might arise anywhere in the whole country. There may be statutes in the different States as to qualifications of jurors which in their construction would not prevent the application of the common law in regard thereto, and so the question of qualification being the same in the Federal as in the state courts (Rev. Stat., § 800; 1 Comp. Stat., p. 623), may be a general one. It is of special importance in this District, where there are so many thousands of clerks and employés of the Government, to know whether they are qualified jurors

to sit on the trial of cases to which the Government is a party. If they be so qualified it might not be cause for much astonishment to see in this District a majority of a jury composed of such jurors.

Taking the contention of the Government to be sound, the fact that a proposed juror is a salaried officer of the Government can only be ground for his own claim of exemption, which, if not made by him, leaves him a competent juror. A jury composed of Government employés where the Government was a party to the case on trial would not in the least conduce to respect for, or belief in, the fairness of the system of trial by jury. To maintain that system in the respect and affection of the citizens of this country it is requisite that the jurors chosen should not only in fact be fair and impartial, but that they should not occupy such relation to either side as to lead on that account to any doubt on that subject. We do not think that § 215 of the code of the District includes the whole subject of the qualifications of jurors in that District. If that section, together with § 217, were alone to be considered, it might be that the juror was qualified. But, by the common law, a further qualification exists. If that law remains in force in this regard in this District a different decision is called for from that made in this case. The common law in force in Maryland, February 27, 1801, remains in force here, except as the same may be inconsistent with or replaced by some provision of the code for the District. Code, § 1, chap. 1, p. 5. It has not been contended that the common law upon the subject of jurors was not in force in Maryland at the above-named date, or that it did not remain in force here, at least up to the time of the passage of the code. Jurors must at least have the qualifications mentioned in § 215, but that section does not, in our opinion, so far alter the common law upon the subject as to exclude its rule that one is not a competent juror in a case if he is master, servant, steward, counsellor or attorney of either party. In such case a juror may be challenged for principal cause as an absolute disqualification of the juror. 3 Blackstone (Cooley's),

4th ed., page 363; *Block* v. *The State*, 100 Indiana, 357, 362. In the Indiana case, Judge Niblack, speaking for the Supreme Court of that State, held in substance in accordance with the above rule of the common law, and that the Indiana statute upon the qualifications of jurors did not strike out the rule of the common law on the subject, when not inconsistent with the statute. This rule applies as well to criminal as to civil cases. Mr. Chief Justice Shepard, in his dissenting opinion in this case, cites many cases to the effect that a clerk or employé of a private party or of a corporation is not qualified to sit as a juror in such a case, over the objection of the opposite side. Although the cases cited were civil cases and rest mainly on the common law, they are not lessened in weight on that account. On the contrary, they apply with added weight to criminal cases. Modern methods of doing business and modern complications resulting therefrom have not wrought any change in human nature itself, and therefore have not lessened or altered the general tendency among men, recognized by the common law, to look somewhat more favorably, though perhaps frequently unconsciously, upon the side of the person or corporation that employs them, rather than upon the other side. Bias or prejudice is such an elusive condition of the mind that it is most difficult, if not impossible, to always recognize its existence, and it might exist in the mind of one (on account of his relations with one of the parties) who was quite positive that he had no bias, and said that he was perfectly able to decide the question wholly uninfluenced by anything but the evidence. The law therefore most wisely says that with regard to some of the relations which may exist between the juror and one of the parties, bias is implied, and evidence of its actual existence need not be given.

The position of the juror in this case is a good instance of the wisdom of the rule. His position was that of an employé who received a salary from the United States, and his employment was valuable to him, not so much for the salary as for the prospect such employment held out for an increase in his business

from the people who might at first come to his store for the purchase of stamps, etc. It need not be assumed that any cessation of that employment would actually follow a verdict against the Government. It is enough that it might possibly be the case, and the juror ought not to be permitted to occupy a position of that nature to the possible injury of a defendant on trial, even though he should swear he would not be influenced by his relations to one of the parties to the suit in giving a verdict. It was error to overrule the defendant's challenge to the juror.

Upon the trial of the case the Government called as a witness John Aspinwall, who was the president of the Fabrikoid Company of Newburg, New York, and it appeared from his testimony that some time in 1902, and prior to the making of the contract between the lock company and the Post Office Department, the defendant had some correspondence with the Fabrikoid Company with reference to the availability and the cost of the material manufactured by that company for use in the manufacture of satchels to be used by the Post Office Department for letter carriers.

After the finding of the two indictments against the defendant, and some time in the latter part of 1903, the defendant visited the place of business in Newburg, New York, of the Fabrikoid Company, and requested the privilege of looking over the correspondence between himself and that company. For the purpose of proving what the Government asserted was a suppression or spoliation of evidence, the witness testified that the defendant was permitted to look over the files in the company's letterbooks and examine his letters to the company, and copies of its letters to him, the witness not being present when the defendant made such examination. Subsequently the witness discovered that a copy of a letter that the company had written to the defendant and dated April 21, 1902, had been removed from the copybook, and the index covering that letter had been erased. The letterbook was then produced by the witness from which the copy letter had been removed, and

it was exhibited to the jury by counsel for the Government. Counsel for the defendant thereupon admitted that the defendant took the copy letter from the letterbook and made the erasure of the reference to the page, and the witness identified the letter then produced as the original which had been taken from the letterbook of the witness. The witness also identified a letter dated April 18, 1902, as a letter which he testified he had received from the defendant, and which counsel for defendant admitted defendant had taken at the same time he had taken the copy letter from the copybook. Counsel for the Government then read in evidence to the jury the letter from defendant of April 18, and also the letter from the witness dated April 21, replying thereto, which had been removed from the letterbook of witness's company. The Court of Appeals has held that both letters were in fact harmless, and that their contents would tend to negative the existence of any sinister intent of defendant in taking them. But evidence as to the intent of defendant in taking them was certainly proper, as is hereafter stated.

The witness Aspinwall further testified that when he discovered the loss of the letters he wrote to the defendant the letter dated December 7, 1903. Counsel for the defendant then admitted that he had the original of that letter, but stated that the witness might read it from his copybook. The letter was then read, in which the witness charged the defendant, in substance, with having surreptitiously removed from the files of the company a copy of the letter from the company to the defendant, and with having erased the page from the index. The letter of December 7 was then offered in evidence without objection.

As soon as the letter was admitted in evidence the counsel for the Government immediately offered the letter written by counsel for defendant in answer to it, but was stopped by the court with an inquiry as to its relevancy, which he answered by stating that he did not see its relevancy. The court observed he would hear from whoever offered the letter as to its

relevancy, when counsel for Government said he did not desire to offer the letter, and that he had only offered it at the suggestion of counsel for defendant, who then moved to strike out the letter just received in evidence (that of December 7), on the ground that it was inadmissible unless coupled with the answer that might have been made to it. The court held that the letter from defendant's counsel could not be considered by the jury, but that the letter written by the witness Aspinwall to defendant was relevant as tending to prove that the defendant was charged by that witness with abstracting the letter from the files. The motion to strike out was denied, and the counsel for the Government then said that he did not offer the answer to the letter, which was accordingly not received in evidence. To obviate an objection that the defendant had no right to offer evidence while the case was with the Government, the defendant subsequently, when the case was with him, offered in evidence the letter written by his counsel, which on objection was ruled out.

It is plain that the letter from the witness Aspinwall to the defendant, making the charge that defendant took the letters, as above stated, was put in evidence by the Government for the purpose of endeavoring to show that the defendant had surreptitiously taken evidence which might possibly be used against him upon his trial. The response of defendant to such letter should have been admitted as explanatory of the letter of accusation. Without the letter of explanation the other letter should not have been received. The Court of Appeals held that it was difficult to understand the theory upon which the letter from Aspinwall to defendant was admissible, but as it was admitted, without objection, there was no error, and the subsequent motion to strike out the letter was addressed to the discretion of the trial court. It seems clear from the record that the letter of the witness to defendant was not objected to, under a belief by defendant's counsel, formed possibly upon some prior arrangement or understanding between counsel, that the answer to it would also, at once, be offered in evidence.

Under these circumstances, and in the absence of the offered explanation, the letter of witness, making a charge of abstracting letters, should have been struck out on the motion made by defendant immediately upon the withdrawal of the offer in evidence of the answer to the letter. It was all one transaction, and the reception of the first letter without objection was at once followed up by the Government's offer of the answer, and when the offer was withdrawn it is too strict an enforcement of a general rule to hold that the motion to strike out was addressed to the discretion of the court. But the motion was not denied on any such ground. The record shows it was denied because the court held the letter proper to be put in evidence. The theory stated by the court was a mistaken one. It was wholly immaterial what charge was made by witness in the letter, separate from the action of defendant, in regard to the charge. Defendant was not on trial for abstracting the letter, and the statements therein were alone no evidence against defendant. If the letter were admitted, then the answer to it should also have been admitted. The court seemed to agree that if the answer had been made by the defendant personally, instead of by his counsel, it might have been admissible, but that as defendant did not himself write the answer it could not be admitted. The court stated, when the offer was first made by defendant's counsel to put the answer to the letter in evidence, that it was not proper to offer any of his evidence at that time, while the case was with the Government, but the answer was subsequently offered in evidence by defendant's counsel, when the case was with him, and, under objection, was again rejected. So the defendant had the accusing letter put in evidence against him and was not permitted to have his answer, through his counsel, admitted in reply.

Again, at the close of all the evidence, when counsel for the defendant once more moved to strike out the letter of witness Aspinwall, the court denied the motion on the ground that the evidence was of a nature to throw light on the minds of the jury upon the moral makeup of the individual, and thus enable

the jury to come to a conclusion as to what his sworn word is worth. This reason was repeated in his charge, when the court said that while such evidence did not tend to indicate that the defendant was guilty, it was admitted to enable the jury to take into consideration what was the degree of moral sense that the defendant witness had.

When the letter was first offered and received in evidence on the part of the Government the defendant had not been placed on the witness stand and after he had been on the stand this evidence was retained, while the defendant was not permitted to show what his written answer to the charge of spoliation was, because the answer was written by his counsel (although by his direction and under his authority) and not by himself, personally. An explanation of the reason for his taking the letters might be quite material to enable the jury to come to a decision, as to the moral makeup of defendant, but he was not allowed to fully give it. The Court of Appeals also held that the answer to that letter, concededly written by defendant's counsel, was plainly inadmissible, but that even if its exclusion had been error, it was cured by the fact that the defendant, when on the stand, testified to the same explanation of his action, *i. e.*, that he understood that Aspinwall had consented that he take such of the files as he desired.

We do not think that the letter written by counsel for the defendant was inadmissible. The defendant had in substance testified that it was written by his counsel, with his consent and by his direction. In other words, that counsel was acting simply as the agent and under the direction of his principal, the defendant in the case. It was not necessary that such letter should be written by the defendant personally, in his own handwriting. The importance of the matter lies in the fact that defendant, as soon as the accusation was made, had, through his counsel, acting under his direction explained the charge made of secretly taking evidence which was in the hands of a third party, and which he feared might be used against him. The defendant did on the trial testify to the same

explanation as contained in the letter of his counsel, *i. e.*, that Aspinwall in substance consented to the taking of the letters, but it is doubtful if such evidence cured the error of excluding the letter written at once after the accusation was made and long before the trial, in which letter he admitted and explained the taking, showing it was from no desire to suppress evidence, but, on the contrary, to preserve it.

We are of opinion, also, that the court erred in its refusal to allow defendant to testify in regard to his intention in taking the letters from the files. His counsel asked him the question when he was on the stand, after he had admitted their taking, whether he took them with the intent to suppress or destroy them, or with intent that they might be preserved and presented to the jury when his trial should come on. Counsel offered to show the fact by the witness and let the witness say which it was. This was objected to by counsel for the Government and the objection sustained.

The witness was further asked whether when he took the evidence he had the intention to destroy it. This, upon objection, was ruled out, as was the question, What did you do with these letters after you had taken them? Defendant's counsel then stated: "We offer to prove that the witness then brought them to his counsel in Washington, Mr. Worthington." The offer was, on objection, overruled.

The whole bearing of the evidence on the part of the Government in regard to the letters could only have been for the purpose of contending that the defendant took the letters without leave and intended to suppress the evidence contained in them. It was proper to prove the intent of the witness when he took these letters, whether he took them with the intent of destroying or suppressing them as evidence against himself, or whether he took them for the purpose of preservation and of delivering them to his counsel to be used on his trial. It was error to reject the evidence, for it was material and proper to go to the jury. The Court of Appeals so held, and said: "The intent of the defendant in obtaining possession of

the letters was material, and being material the defendant should have been permitted to testify as to his intent and motive." The court, however, Mr. Chief Justice Shepard dissenting, held that the record showed that this error, in excluding material evidence, did not harm the defendant, and should, therefore, be disregarded by the appellate court.

There is a presumption of harm arising from the existence of an error committed by a trial court against the party complaining, in excluding material evidence on a trial, especially before a jury. It is only in cases where the absence of harm is clearly shown from the record that the commission of such an error against a party seeking to review it is not cause for the reversal of the judgment. *Deery* v. *Cray*, 5 Wall. 795, 807; *Smiths* v. *Shoemaker*, 17 Wall. 630.

The defendant was peculiarly situated in this case, and great care was necessary to prevent injustice to him. The record shows that one of the alleged conspirators, Machen, had just prior to defendant's trial herein pleaded guilty under this same indictment and had been sentenced to imprisonment, to commence upon the expiration of a term of imprisonment he was then serving. He was not called as a witness. While this action of Machen was not the slightest evidence of the guilt of defendant, and was not matter to be referred to or considered by the jury, it left defendant without the aid of Machen in the trial of the case. In addition to that, Lorenz was called as a witness for the Government upon the trial of this defendant, and testified that he was a defendant in the two conspiracy indictments in regard to which this defendant was then on trial, and that he was then serving in the Moundsville Penitentiary a sentence from the Supreme Court of the District. Both of these men might have been guilty of a conspiracy to defraud the United States, and the defendant be innocent thereof. But a felon, being also a confessed accomplice, was thus produced by the Government as a witness for the purpose of proving its case against defendant, the witness having, as it would appear, in popular language, turned "State's evidence,"

at least so far as to incriminate himself together with defendant. Without his evidence it would have been difficult, if not impossible, to convict the defendant. No reflection is intended or intimated with regard to this action on the part of the Government. It was wholly within the discretion of its law officers, and their decision ought not to be reviewed by the court. But the evidence of a witness, situated as was Lorenz, is not to be taken as that of an ordinary witness, of good character, in a case whose testimony is generally and *prima facie* supposed to be correct. On the contrary, the evidence of such a witness ought to be received with suspicion, and with the very greatest care and caution, and ought not to be passed upon by the jury under the same rules governing other and apparently credible witnesses. In many jurisdictions such a man is an incompetent witness unless he has been pardoned. The facts surrounding this case make it particularly important that the rule in regard to material errors should be most rigidly adhered to. If it be not clear that no harm could have resulted from the commission of this material error, the judgment should be reversed. A careful perusal of the testimony, regarded by the court below as sufficient to show that no harm resulted to the defendant on account of this error, has failed to convince us that such is the fact. In the opinion of the Court of Appeals it is said there was no testimony given as to the intent with which defendant took the letters. This was, of course, because such evidence was excluded. The letters were, in fact, subsequently produced by defendant's counsel in court. It is further said, in the opinion, that the defendant was "permitted to testify as to his reason for erasing the index number in the letterbook, and that he did so 'with the idea of putting that,' *i. e.*, the letter from the company, 'back, and making the file perfect.' It is therefore clear that the defendant was permitted to offer testimony, fully meeting the Government's contention that he had taken the letters without the consent of their custodian; further, that on the subject of his intent in taking them he was permitted to offer testimony

from which the only possible inference was that he desired them in order that he might show everything with reference to his transactions with the Fabrikoid Company; and that as to one letter, at least, he was permitted to testify that he took it with the intention of putting it back. To have permitted him to testify, as he offered in addition to the foregoing, that he took them with the intention of showing them to his counsel, would have added little, if anything, to his explanation; indeed, as already stated, such testimony was not directly responsive to that offered by the Government, viz., that he had taken the letters surreptitiously. This latter allegation he was permitted to negative fully and explicitly. It is impossible to conclude that the refusal of the learned trial justice to permit him to testify more fully as to what he intended to do with the letters was prejudicial to his defense."

There may have been testimony some time during the trial, from which inferences might possibly have been drawn as to the motive or intent with which those letters were taken, but, instead of testimony from which such inferences might have been drawn, the defendant was entitled to state directly on oath to the jury what that intention was, and what were the motives which induced him to take the letters.

It is hardly possible to imagine a case where greater care was necessary in regard to the exclusion of proper and admissible evidence than in the case before us. As we have said, it was entirely possible that the jury might believe that both Lorenz and Machen were guilty, as alleged, in the indictment for conspiracy, and that the defendant was, nevertheless, perfectly innocent. No material and proper evidence upon that issue should have been excluded, and the error committed was not, in our opinion, clearly shown to have been harmless.

During the trial, while the case was with the defense, counsel offered in evidence a certain book, which contained entries relating to the financial transactions between defendant and Lorenz, in connection with the contract, dated June 25, 1902, between the lock company and the Post Office Department.

As part of its case, the Government had been permitted to introduce evidence tending to show that Lorenz had paid to defendant some part of the money which Lorenz had received from the lock company, and evidence was given which the Government claimed tended to show that the receipt of these moneys by defendant was concealed from his company.

Spencer Trask had been called by the Government as a witness for the purpose of showing his ignorance of any such payments, and he was asked whether the defendant had ever told him that under this contract with the Government he was to receive a part of the money back from Lorenz, and the witness answered, "Certainly not; absolutely not." It appeared that the witness Trask was a banker in the city of New York, and that he held a controlling interest in the lock company, of which Mr. Chance, his private secretary, was president. He also testified that he did not care to and did not, as a matter of fact, spend time in the examination of the details of the business of the lock company; that he confided it to Mr. Chance and the defendant, and that the president, Mr. Chance, by direction of witness, had the general conduct of the company under his control.

The question whether the defendant had received money back from Lorenz, of which he gave no account to and concealed from the lock company, was strongly contested upon the trial, and evidence given on the part of the Government, which it claimed tended to prove the concealment. The defendant, on the contrary, contended that these moneys, which he did not deny that he had received, were paid to him by Lorenz for services which defendant had performed for him and which moneys were known by Mr. Chance to have been paid and that he had, as president of the company, approved of such payments. It was further contended that Mr. Chance had seen the book in which the defendant had entered the fact and the dates of such receipts of money from Lorenz, and that the book had been given to Mr. Chance for the purpose of examination by him in his capacity as president; that Mr. Chance

had taken the book and had looked through it, and checked in lead pencil marks, in evidence of his approval, the various items, among which were the items showing the receipt of the moneys from Lorenz by defendant. The witness testified that such book, then offered in evidence by his counsel, was in the same condition when offered in evidence as it was when it was received back by him from Mr. Chance after his examination and approval of its entries.

The receipt of the book in evidence was objected to by counsel for the Government, and excluded by the court. "What is there," inquired the court, "to show that this book has not been altered since he made the entries" (meaning the defendant)? And again the court said: "I am very seriously in doubt as to whether you are entitled to have the book in evidence on the ground claimed for it, that is, that it was submitted to Chance; and on account of the condition of the book I will resolve that doubt against you." We do not see there was anything in the condition of the book (which was produced on the argument before us) that would prevent its being received in evidence.

We think the court erred in the exclusion of the book. It was not offered as an ordinary account book, showing accounts between different parties, but it was offered as a written corroboration of the evidence of the defendant when he testified that the receipt of the moneys by him from Lorenz was known by the company, and was not concealed from it by him, but, on the contrary, was put into a book which the president of the company saw, and which he checked as approved. It is true that the integrity of the items in the book depends upon the evidence of the defendant. He might have made all of them after this question arose. He might have so made the entries as to the receipt of the moneys from Lorenz. He might have forged the check marks alleged to have been made by Mr. Chance, but he testified that such was not the case; that the book was in the condition it was when he received it from Mr. Chance. We think it was competent to allow it to be shown

to the jury, and for the jury to decide as to its worth and weight. The book was a part of the transaction testified to by the defendant.

Various other questions were urged on the argument before us, but as those already discussed require a reversal of the judgment, we do not think it necessary to notice them.

The judgment is

Reversed.

MR. JUSTICE MOODY did not take any part in the decision of this case.